

United States  
Court of Appeals  
for the Ninth Circuit

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THE CITY OF ANCHORAGE, a Municipal Corporation, Z. J. LOUSSAC, Mayor of the City of Anchorage, B. W. BOEKE, City Clerk-Treasurer of the City of Anchorage, ROBERT E. SHARP, City Manager of the City of Anchorage,  
Appellants,  
vs.

ARTHUR E. ASHLEY and VIRGINIA  
ASHLEY,  
Appellees.

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Transcript of Record

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Appeal from the District Court for the Territory  
of Alaska, Third Division

FILED

NOV 14 1951

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

Attorney for Plaintiffs:

GEORGE McLAUGHLIN,

P.O. Box 2231,  
Anchorage, Alaska.

Attorneys for Defendants:

HELLENTHAL, HELLENTHAL &  
COTTIS,

P.O. Box 941,  
Anchorage, Alaska.



In the District Court for the Territory of Alaska,  
Third Judicial Division

No. A-6622

ARTHUR E. ASHLEY and VIRGINIA  
ASHLEY,

Plaintiffs,

vs.

THE CITY OF ANCHORAGE, a municipal corporation; Z. J. LOUSSAC, Mayor of the City of Anchorage; B. W. BOEKE, City Clerk-Treasurer of the City of Anchorage; ROBERT E. SHARP, City Manager of the City of Anchorage,

Defendants.

## COMPLAINT

The plaintiffs complain of the defendants and for a cause of action allege:

### I.

That the plaintiffs are and at all times hereinafter mentioned were residents of the Territory of Alaska, Third Judicial Division.

### II.

That the defendant City of Anchorage is a municipal corporation duly incorporated and existing under and by virtue of the laws of the Territory of Alaska.

### III.

That the defendant Z. J. Loussac is the Mayor of

the City of Anchorage, and a resident of the Territory of Alaska, Third Judicial Division.

IV.

That the defendant B. W. Boeke is the City Clerk-Treasurer of the City of Anchorage, and a resident of the Territory of Alaska, Third Judicial Division.

V.

That the defendant Robert E. Sharp is the City Manager of the City of Anchorage, and a resident of the Territory of Alaska, Third Judicial Division.

VI.

That the plaintiffs are, and at all times herein-after mentioned, were the owners in fee and in possession of that certain lot, piece, and parcel of land situated in the City of Anchorage, in a certain alleged Sewer Improvement District No. 1, and more particularly described as follows:

Lot Ten (10) of Block Forty Two A (42 A) of the South Addition of the City of Anchorage.

VII.

That on or about the 18th day of October, 1950, the defendant City of Anchorage, did pass a certain resolution Number 577, a copy of which is attached hereto and made a part hereof, by virtue of which the said City of Anchorage, did wrongfully and unlawfully, and without the consent of the plaintiffs, levy an alleged assessment and impose an alleged lien in the amount of \$336.77 on the above described property of the plaintiffs, pursuant to a certain notice of special assessment made by the City of Anchorage on the 24th day of October, 1950, which is attached hereto and made a part hereof.

## VIII.

That by virtue of said resolution of the City of Anchorage and notice of special assessment, the defendant City of Anchorage claims a paramount lien or mortgage or interest in and to the above described land of the plaintiff, and the said claim of the defendant City of Anchorage is without any right whatsoever and contrary to the statutes of the Territory of Alaska, and the said Defendant and each of them is without any right whatsoever, and have not any estate, right, title, or interest, lien or claim whatever in said lands or premises of the plaintiffs or any party thereof.

## IX.

That by virtue of said claim of the said defendant City of Anchorage, the plaintiffs' property has depreciated in value, and is not readily marketable, and will further depreciate in value with the continued assertion by defendants of a claim of lien.

## X.

That the plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray the court,

That the defendant City of Anchorage be required to set forth the nature of its claim against the plaintiffs, and that the adverse claim of lien of the City of Anchorage be determined by decree of this court.

That by the said decree it be declared and adjudged that the defendant City of Anchorage has no estate, or lien, or interest whatever in or to said land or premises, or in any part thereof, and that the title of the plaintiffs is good or valid.

That the defendants and each of them be enjoined and debarred forever from asserting, or aiding or assistin in asserting in any manner whatsoever, any claim or lien whatever adverse to the plaintiffs by virtue of the aforesaid assessment on plaintiffs property,

For Such Other and further relief as to shall seem meet and agreeable to equity, and for the costs of this action together with a reasonable attorneys fee.

/s/ GEORGE M. McLAUGHLIN,  
Attorney for Plaintiffs.

United States of America,  
Territory of Alaska—ss.

Arthur E. Ashley and Virginia Ashley, each being first duly sworn on oath do depose and say: That they are the plaintiffs in the foregoing action, have read the foregoing complaint, know the contents thereof, and that the same is true.

/s/ ARTHUR E. ASHLEY,  
/s/ VIRGINIA ASHLEY.

Subscribed and sworn to before me this 4th day of December 1950.

[Seal] /s/ JAMES E. SWAN,  
Notary Public, Territory of Alaska  
My Commission expires Feb. 21, 1954.

[Printer's Note: Resolution No. 577 is set out in full at pp. 88-90 of this printed record.]



City of Anchorage, Alaska

NOTICE OF SPECIAL ASSESSMENT  
SEWER 1949-50

Districts No. 1, 2, 3 and 4

Lot 10; Block 42A; Addition South

From: City of Anchorage

To: Arthur E. and Virginia Ashley  
General Delivery, City.

You are hereby notified that a Special Assessment for Sewer Improvements has been levied against the property which you own, namely, the above indicated lot and block in the City of Anchorage.

Your attention is invited to the following quotation from Resolution No. 577, passed and approved by the City of Anchorage, 18 October 1950, which provision covers the time of delinquency, method of payment and the amount of penalty and interest thereon:

“3. The assessment levied herein shall be paid as herein described on or before 15 January 1951, and shall become delinquent at midnight, 15 January 1951. The assessment may be paid in five equal annual installments, said installments to be payable on or before 15 January 1951, 15 January 1952, 15 January 1953, 15 January 1954 and 15 January, 1955. If any such installment is not paid when due, the entire unpaid portion of said assessment shall immediately become due. No interest shall be charged on unpaid balances of said special assessment if promptly paid as afore described.

If not fully paid before delinquency, the unpaid assessment shall bear interest at the rate of eight per cent per annum; a penalty of eight per cent shall be added to said unpaid balance of the assessments, not including interest."

Your property has been assessed in the amount of \$336.77 payable over a five year period as follows:

Installment No. 1 payable on or before Jan. 15, 1951—\$67.37.

Installment No. 2 payable on or before Jan. 15, 1952—\$67.35.

Installment No. 3 payable on or before Jan. 15, 1953—\$67.35.

Installment No. 4 payable on or before Jan. 15, 1954—\$67.35.

Installment No. 5 payable on or before Jan. 15, 1955—\$67.35.

Please Note: Any Installment not paid when due causes all future installments to become due and payable, with penalty and interest, immediately.

For your information, the City Council will still consider requests for adjustment of the assessment levied where property owners feel their assessment is not equitable. In the event you feel the assessment levied against your property is not equitable, please notify this office in order that the matter may be submitted to the City Council for consideration.



The City Council is aware that the amount of this assessment is a great deal higher than originally estimated and that the City was negligent in not so advising property owners of this fact at an earlier date. The City's financial position is such that the levying of the full amount was mandatory to meet the debt service on the bonds issued to pay for the sewer improvements petitioned for by the property owners in the four districts.

Dated at Anchorage, Alaska, this 24th day of October, 1950.

/s/ B. W. BOEKE,  
ET City Clerk-Treasurer.

[Endorsed]: Filed Dec. 4, 1950.

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[Title of District Court and Cause.]

### MOTION TO DISMISS

The defendants move the Court as follows:

To dismiss the action because the complaint fails to state a claim against defendants upon which relief can be granted.

Dated at Anchorage, Alaska, this 20th day of December, 1950.

/s/ JOHN S. HELLENTHAL,  
Attorney for Defendants.

Acknowledgment of Service attached.

[Endorsed]: Filed Dec. 22, 1950.

[Title of District Court and Cause.]

### MOTION FOR SUMMARY JUDGMENT

The plaintiffs move the court as follows:

To grant a summary judgment for the plaintiffs against the defendants, or any of them.

This motion is based upon the attached affidavits, certified copies of records, and all the files and proceedings herein.

Dated at Anchorage, Alaska, this 26th day of December, 1950.

/s/ GEORGE M. McLAUGHLIN,  
Attorney for Plaintiffs.

To: John S. Hellenthal, Esq., Attorney for Defendants:

Please take notice, that the undersigned will bring the above motion on for hearing before this court at the Court House, Post Office Building, Anchorage, Alaska, on the 5th day of January 1951, at 2 o'clock in the afternoon of that day or as soon thereafter as counsel can be heard.

/s/ GEORGE M. McLAUGHLIN,  
Attorney for Plaintiffs.

Acknowledgment of Service attached.

### AFFIDAVIT IN SUPPORT OF A MOTION OF SUMMARY JUDGMENT

Arthur E. Ashley, one of the plaintiffs herein, being duly sworn, does depose and say:

1. That he is one of the plaintiffs in the above described cause; that the facts set forth herein are within his personal knowledge.

2. That he and his wife, plaintiff Virginia Ashley, are the owners in fee as tenants by the entirety of the premises located at 1513 I Street, in the confines of the City of Anchorage; that these premises are more particularly described as follows:

Lot Ten (10) of Block Forty Two (A) (42A) of the South Addition of the City of Anchorage.

3. That he and his wife, said Virginia Ashley, have been in possession of said premises since the 22nd day of August 1947 by virtue of a deed dated the 22nd day of August 1947 from Ronald D. Humphrey to Arthur E. Ashley and Virginia Ashley, as husband and wife, That said deed was recorded on June 20, 1949 at Anchorage Precinct and Recording District in Volume Eighty (80) Book of Deeds of the City of Anchorage at page 108.

4. That I was never aware of any invalidity in the sewer assessment proceedings until I was so informed by George M. McLaughlin, my attorney, in September, 1950.

5. That I have read Resolution No. 545, City of Anchorage, Alaska, and know as a fact that my above described property comes within and is included within Sewer Improvement District Number 1.

6. That I have read Resolution No. 545, City of Anchorage, Alaska, and know as a fact, and observed, that as stated therein, sewer construction had commenced and had substantially proceeded throughout Sewer Improvement District Number 1, sometime prior to the second day of March 1950.

7. That I was unaware that a sewer assessment was to be levied for the construction of said sewers in Sewer Improvement District No. 1.

8. That I did at the hearing of the City Council of the City of Anchorage protest against the imposition of the levy of assessment.

9. That I never signed a petition for the construction of said sewer.

In witness whereof I have affixed my name this 21st day of December, 1950.

/s/ ARTHUR E. ASHLEY,  
Plaintiff herein.

Subscribed and sworn to before me this 22nd day of December, 1950.

[Seal] /s/ JAMES E. SWAN,  
Notary Public in and for the Territory of Alaska.  
My Commission expires 21 Feb. 54.

## AFFIDAVIT IN SUPPORT OF A MOTION FOR SUMMARY JUDGMENT

United States of America,  
Territory of Alaska—ss.

Virginia Ashley, one of the plaintiffs herein, being duly sworn, does depose and say:

1. That she is one of the plaintiffs in the above described cause; that the facts set forth herein are within her personal knowledge.

2. That she and her husband, plaintiff Arthur E. Ashley, are the owners in fee as tenants by the entirety of the premises located at 1513 I Street, in the confines of the City of Anchorage; that these premises are more particularly described as follows:

Lot Ten (10) of Block Fourty Two A (42A) of the South Addition of the City of Anchorage.

3. That she and her husband, said Arthur E. Ashley, have been in possession of said premises since the 22nd day of August 1947 by virtue of a deed from Ronald D. Humphrey to Arthur E. Ashley and Virginia Ashley, as husband and wife; that said deed was recorded on June 20, 1949, at Anchorage Precinct and Recording District in Volume Eighty (80) Book of Deeds of the City of Anchorage at page 108.

4. That I was never aware of any invalidity in the sewer assessment proceedings until I was so informed by George M. McLaughlin, my attorney, in September 1950.

5. That I have read Resolution No. 545, City of Anchorage, Alaska, and know as a fact that my above described property comes within and is included within Sewer Improvement District Number 1.

6. That I have read Resolution No. 545, City of Anchorage, Alaska, and know as a fact, and observed that, as stated therein, sewer construction had commenced; and had substantially proceeded throughout Sewer Improvement District Number 1, prior to the second day of March 1950.

7. That during the fall and winter of 1949-50, substantial excavating was done throughout Sewer Improvement District Number 1, for the laying of sewers; I personally observed this.

8. That I was unaware that a sewer assessment was to be levied for the construction of said sewers in Sewer Improvement District No. 1.



9. That I never signed a petition for the construction of said sewer.

10. That the notice of special assessment attached to the complaint herein was actually received by me in the mail.

/s/ VIRGINIA ASHLEY,  
Plaintiff herein.

Subscribed and sworn to before me this 22nd day of December, 1950.

[Seal] /s/ JAMES E. SWAN,  
Notary Public in and for the Territory of Alaska.  
My Commission expires 21 Feb. '54.

EXCERPTS FROM THE MINUTES OF THE  
COMMON COUNCIL OF THE CITY  
OF ANCHORAGE

In Regard to the Trunk Outfall Sewer and  
Sewer in the South Addition to the Original  
Townsite of Anchorage

Jan. 19, 1947—page 206, vol. 6: Public Improvement Plans were discussed.

“It was moved by Dodd and seconded by Odsather that the City Attorney pass on the legal status and draw up the necessary ordinances. All voted in the affirmative.”

Feb. 8, 1947—page 211, vol. 6: Proposed New  
Constructions:

\* \* \* \* \*

“Sewers: Chester Creek Outfall and 1st Avenue  
Outfall.

(No Assess. against Prop. for above work) .....	\$225,000.00
Sewer Lines in South and Third Ad- ditions (Property Assessments will 2/3 of this total) .....	\$225,000.00
<hr/>	
Total .....	\$450,000.00''

March 27, 1947—Election was held and above ap-  
proved by voters.

April 2, 1947—page 225, vol. 6: Results of above  
election of 3-27-47 under Ordinance 193:

\* \* \* \* \*

Proposition No. 4—Construction of Trunk Sewer  
in 3rd and South Additions: For: 824. Against: 109.

Proposition No. 5—Expand Existing Sewers. For:  
810. Against: 106.

May 14, 1947—page 242, vol. 6: The Proposed  
Ordinance covering the construction of a trunk out-  
fall sewer line to serve the South and Third Addi-  
tions was read. Ordinance No. 203 adopted.

July 2, 1947—page 261, vol. 6: Proposed Ordinance  
No. 216, Amending Ordinance No. 206 read and  
adopted.

May 6, 1948—page 376, vol. 6: Decision reserved in  
regard to Sewer Bonds for Trunk Outfall Sewer  
in the South and Third Additions and the expanding  
of present sewer system.

May 7, 1948—page 376, vol. 6: Decided not to  
accept Marshall and Williams offer of Bonds.

May 10, 1948—page 379, vol. 6: "After consider-  
able discussion a vote was taken on the motion to  
negotiate for the sale of the bonds. All voted in the

affirmative. The City Attorney was directed to draft an agreement concerning the purchase of the bonds in accordance with his suggestions and those of the Council.”

May 11, 1948—page 384, vol. 6: Revised agreement with Foster and Marshall for the sale of Bonds accepted.

June 2, 1948—page 396, vol. 6: “Mr. Arthur Waldron and Dr. Johnson requested information in regard to when the outfall sewer would be constructed that was authorized by the voters on March 27, 1947. The group was informed by the Council that the possibility of construction of the sewer this year was very doubtful.”

Feb. 2, 1949—page 102, vol. 7: “The City Comptroller requested that a policy be determined on the payment of paving, water and sewer assessments by the property owners.

“It was moved by Rozell and seconded by Summers that property owners be given 5 years in which to pay for paving assessments in 5 equal installments and 3 years on water and sewer assessments. All voted in the affirmative.”

Feb. 10, 1949—page 106, vol. 7: “The method of assessment for the Trunk Outfall Sewer Project and Lateral Sewer Extensions and maturity dates for bonds to be issued to finance these projects was discussed.

“It was decided that, inasmuch as the Trunk Outfall Sewer was designed with sufficient capacity to permit expansion of the lateral extension system, a



special assessment would not be levied except in those cases where sewer services will be directly connected to the trunk sewer line. In these cases property owners will be assessed an amount equal to the normal cost of installing a lateral sewer line with sufficient capacity to serve their property.

“It was also decided that an assessment equal to two-thirds of the cost of installing the Lateral Sewer Extensions would be levied.

“The City Attorney was instructed to draft an Ordinance to promulgate these decisions and the Comptroller instructed to compute bond maturity dates accordingly.”

April 20, 1949—page 132, vol. 7: “Proposed Ordinance No. 1005, and Ordinance authorizing the issuance of \$225,000.00 in bonds for the construction of two trunk outfall sewer lines was read.

“It was moved by Summers and seconded by Krause that Ordinance No. 1005 be approved. All voted in the affirmative.”

June 15, 1949—page 160 and 161, vol. 7: “The Flora Engineering Company submitted a proposed contract with the Kincaid and King Construction Company for the installation of sanitary sewer main and manholes along G Street from 11th to 14th for an approximate cost of \$8,800.00.”

“It was moved by Setchfield and seconded by Krause that the contract with Kincaid and King for the installation of a sewer main along G Street from 11th to 14th Streets be approved. All voted in the affirmative.

A lengthy discussion in regard to the policy of

assessing cost of sewer service lines within the City was held. The following policy relative sewer services to be installed on the sewer line between 11th and 14th on G Street, prior to paving of that street, was adopted:

“That property owners be contacted and informed of the price the City can contract the installation and given the option to have the City install the services or agree to have the service installation completed no later than ten (10) days from date the sewer ditch is opened; the total cost in either event to be borne by the property owner.

“The Flora Engineering Company submitted final plans and specifications for the construction of the sewer project as approved by the voters at the election of March 27, 1947.

“It was moved by Setchfield and seconded by Summers that the plans and specifications for the sewer project be approved. All voted in the affirmative.”

July 14, 1949—page 177, vol. 7: “Mr. Flora, of the Flora Engineering Company, submitted the contract with Kincaid and King Construction Company, Inc. for sewer on G Street, 11th to 14th, in the amount of \$9,523.94 and recommended approval.

“It was moved by Setchfield and seconded by Rozell that the City Manager be authorized to sign a final contract with Kincaid and King Construction Company, Inc., in the amount of \$9,523.95, said action in accordance with the minutes of the meeting of June 15, 1949, wherein a proposed contract with the Kincaid and King Construction Co. for the installation of a sewer main between 11th and 14th Streets on G Street was approved in the approxi-

mate amount of \$8,800.00. All voted in the affirmative."

Aug. 3, 1949—page 182, vol. 7: "Deletion from the Sewer Assessment of the cost of a sewer lift was discussed and the matter referred to the City Manager and City Engineer."

"A discussion was held on method of payment of Special Assessments.

"It was moved by Rozell and seconded by Krause when a resolution providing for payment of assessments is drafted, provision be made that a discount of 3½% be allowed on any payments made in advance on all assessments and water improvement assessments. All voted in the affirmative.

Nov. 1, 1949—page 240 and 241, vol. 7: "It was moved by Setchfield that the Council go into executive session to consider the Water Supply System and sewer project and related contracts. All voted in the affirmative.

\* \* \* \* \*

Construction progress to date and certain deviations from contract specifications that had been brought to the attention of the Flora Engineering Company by inspectors of the City Engineer's office on the sewer project was briefly discussed."

Nov. 7, 1949—page 255, vol. 7: "The City Comptroller requested that a policy be established regarding assessments on incomplete paving and sewer projects.

"It was moved by Davis and seconded by Rozell that partial assessments be levied on incomplete sewer and paving projects. All voted in the affirmative.

Nov. 26, 1949—page 264, vol. 7: “Mr. Claude Isenberger spoke briefly and made an oral report on the progress of the sewer project.”

Nov. 27, 1949—page 264 and 265, vol. 7: “Mr. Claude Isenberger, of the Flora Engineering Company, spoke briefly and made an oral report on the construction of the Sewer Project.

After considerable discussion it was moved by Barber and seconded by Davis that the City give the Stateside Construction Company and his Surety a three day written notice of it's intent to exercise it's right, under paragraph 16 of the Contract, dated July 1, 1949, to undertake the work required between Station 4, plus 81 and 5 plus 81 on the Chester Creek outfall line because of the contractor's failure to properly prosecute this phase of the contract after repeated notice from the Engineer. All voted in the affirmative.”

Dec. 14, 1949—page 277 and 278, vol. 7: “A letter was read from the Flora Engineering Company and, upon recommendation of the City Engineer, quoting an estimate cost to the contractor for gravel used in bedding for the sewer line along First Avenue and in the South Addition, and recommended approval of \$11.00 per cubic yard for the gravel used on First Avenue Sewer project and \$16.00 per cubic yard on the sewer outfall in the South Addition project as follows:

146 cubic yard at \$11.00.....	\$1,606.00
167 cubic yard at \$16.00.....	2,672.00

---

Total.....	\$4,278.00
------------	------------

“It was moved by Davis and seconded by Setch-



field that the recommendation of the Flora Engineering Company be accepted and approved for payment. All voted in the affirmative.

Feb. 8, 1950—page 325, vol. 7: “The City Engineer reported that a portion of sewer system in the South Addition would be in operation within approximately one week.”

March 1, 1950—page 334, vol. 7: “Proposed Resolution No. 545, Sewer Assessments was read.

“It was moved by Peterson and seconded by Setchfield that the rules be suspended to consider the resolution. Voted for the motion: Barber, Davis, Peterson, Setchfield. Voted against the motion: Rozell. Motion declared lost.

“It was moved by Peterson and seconded by Setchfield that this be considered the First Reading of the resolution. Voted for the motion: Barber, Davis, Peterson, Setchfield. Voted against the motion: Rozell. Motion declared carried.”

March 2, 1950—page 339-342, vol. 7: “Proposed Resolution No. 545, Sewer Assessments in Sewer Districts No. 1, 2, 3 and 4 was read for the second time.

“City of Anchorage, Alaska

Resolution No. 545

Sewer Assessments in Four Districts

Be It Resolved by the City of Anchorage—

1. That the following described sewer districts were created by the City of Anchorage.

\* \* \* \* \*

## Sewer Improvement District No. 4

Beginning at a point in the northeast corner of Block 36 of the East Addition of the City of Anchorage or at the corner of First Avenue and Gambell Street; thence south along the east corporate line of

## “Sewer Improvement District No. 1

Beginning at the intersection of 12th Avenue and “U” Street, where the corporate limits of the City meets the boundary of the Alaska Railroad Terminal Reserve; thence south along “U” Street to a point 187.50 feet from the intersection of “U” Street and 13th Avenue; thence east parallel from the intersection of “U” Street and 13th Avenue; thence east parallel to Scenic Way to the northeast corner of Block 47 of the South Addition; thence south along “S” Street a distance of 375 feet; thence southeast to a point midway on the South border of Block 46 of the South Addition, which point is on the south corporate limit; thence east along the corporate limits of the City or 16th Avenue to where it intersects with “C” Street; thence north along “C” Street to 12th Avenue; thence west 500 feet along 12th Avenue; thence north at right angles to 11th Avenue; thence west along “G” Street to 11th Avenue; thence west along 11th Avenue to “H” Street; thence south on “H” Street to 13th Avenue; thence west 750 feet along 13th Avenue; thence north at right angles to 12th Avenue; thence west along 12th Avenue to “L” Street; thence north 150 ft. along “L” Street; thence west 300 feet at right angles through the alley to “M” Street; thence north on “M” Street to 11th

Avenue; thence west on 11th Avenue to "N" Street; thence south on "N" Street 150 feet; thence west at right angles through the alley to the extension of "R" Street; thence north at right angles 150 feet to 11th Avenue; thence west along 11th Avenue to the east border of the Alaska Railroad Terminal Reserve; thence southwest along the east boundary of the Alaska Railroad Terminal Reserve to the point of beginning."

\* \* \* \* \*

2. "That the owners of more than one-half in value of the property to be specially benefited by the installation of sewers in the above-described sewer districts have heretofore, prior to the beginning of construction on said projects, requested in writing that the City assess two-thirds of the cost thereof, namely, of the cost of construction of necessary sewer facilities, including trunk and lateral sewers, to serve their properties which were described in the petitions, against their real property so specially benefited; that the following tabulation shows the areas where such consents have been obtained and show as to each area the total assessed valuation of property specially benefited, the valuation represented by property owners' signatures on petitions and the percentage of total valuation represented on signed petitions:

Sewer Improvement District No. 1: Total assessed valuation, \$1,608,500.00; signed up valuation, \$923,750.00; signed up % of total valuation, 57.42%.

Sewer Improvement District No. 2: Total assessed valuation, \$215,875.00; signed up valuation, \$132,350.00; signed up % of total valuation, 61%.

Sewer Improvement District No. 3: Total assessed valuation, \$156,350.00; signed up valuation, \$111,-875.00; signed up % of total valuation, 71.55%.

Sewer Improvement District No. 4: Total assessed valuation, \$684,800.00; signed up valuation, \$465,-575.00; signed up % of total valuation, 68%.

3. That the property to be specially benefited by the sewer improvements within the above-described areas consists of each lot in said above-described areas in proportion to the area thereof; it being hereby found that each lot of real property within the above-described areas is benefited in proportion to its area.

4. That the total value of the property specially benefited by the proposed improvements is as indicated in par. 2 above; that the total value of the property specially benefited by these improvements owned by persons whose signatures appear on written petitions on file with the City Clerk requesting the particular improvement is as indicated in par. 2 above; that the percentage of value of the property to be specially benefited by each improvement in each area is as indicated above in par. 2, and, as indicated, is represented on petitions requesting said improvements; that the requisite petitions signed by all the owners of at least one-half in value of the property specially benefited by the above improvement are on file with the City.

5. That, heretofore, prior to the commencement of construction of the requested improvements above described, and now, the Council finds that the requested improvements are necessary and should be made; that it is necessary that the City construct



sewer systems in said above described areas.

6. The Council hereby finds the above facts stated in paragraphs 1 to 5 inclusive to be the true facts in this matter and hereby expressly makes this finding retroactive to the date of submission of petitions and date of commencement of construction and award of sewer contract to Stateside Construction Company and hereby ratifies and confirms all its prior actions in this matter, expressly its prior resolve that the above-described improvements were necessary and that they should be made and that the petitions were legally sufficient and that requests have been signed by the owners of at least one-half in value of the property to be specially benefited.

7. The Council hereby decides that two-thirds of the cost of the sewer improvements herein mentioned shall be assessed against the real property so specially benefited in proportion to the benefit received by each lot in accordance with the area of each lot in the above-described districts and pursuant to sub-section 104.2, Chap. 3, Anchorage General Code; this finding shall ratify and confirm prior findings in this matter made by the Council at the time of receiving the petitions or requests for the project and shall be retroactive to that time.

8. The City Manager shall keep correct account of all of the expenses of the improvement herein authorized in accordance with sub-section 102.4, Chap. 3, Anchorage General Code.

Publication of this resolution shall be made by posting a copy hereof on the City Hall Bulletin

Board, for a period of ten (10) days following passage.

/s/ EDWARD G. BARBER,

Acting Mayor, City of Anchorage

Attest:

/s/ B. W. BOEKE,

City Clerk, City of Anchorage."

It was moved by Setchfield and seconded by Peterson that Resolution No. 545 be adopted. Voted for the motion: Barber, Davis, Krause, Peterson, Setchfield. Voted against the motion: Rozell. Motion declared carried."

April 19, 1950—page 385, vol. 7: "The City Engineer gave an oral report on the progress of the Sewer Main installation in the South Addition."

Page 25, vol. 8, 6-7-50: Mr. Ed Palmquist requested that a sewer main be constructed along his property at 1518 K Street. Mr. Palmquist was assured by the City Engineer that construction of a sewer line in that block would be installed in July of this year."

8-9-50—page 82, vol. 8: The City Engineer gave an oral report on the construction of the sewer lines and stated they are in operation except for cleaning the First Avenue Sewer line.

8-23-50—page 93, vol. 8: "Mr. Ed Arnell, attorney for the Stateside Construction Company, requested that immediate action be taken to *final* out the sewer contract which his firm considers a completed installation."

“The Acting City Manager reported that additional time would be required before a final settlement could be attained principally because of the fact that the contractor only recently filed claims for extra work and the City finds incomplete.”

9-6-50—page 103, vol. 8: “The City Manager and City Engineer submitted a schedule of Sewer Assessments in four districts and gave a detailed explanation on the method of averaging the assessment costs.”

“Proposed Resolution No. 570, providing for sewer assessments in four Districts and a hearing to be held on September 27, 1950 was read.

“After considerable discussion it was moved by Setchfield and seconded by Peterson that the rules be suspended to consider Resolution No. 570 Voted for the motion: Barber, Krause, Peterson and Setchfield. Voted against the motion: Rozell. The motion was declared lost.

“After further discussion it was moved by Setchfield and seconded by Peterson that this be considered the first reading of Resolution No. 570. Voted for the motion: Barber, Krause, Peterson and Setchfield. Voted against the motion: Rozell. The motion was declared carried.

9-13-50—page 107 etc., vol. 8: “Resolution No. 570, providing for sewer assessments in four districts and for a hearing to be held on September 29, 1950 was read for the second time.

“It was moved by Setchfield and seconded by Peterson that Resolution No. 570 be adopted. All voted in the affirmative.

Copy

"Resolution No. 570

Copy

## Sewer Assessments in Four Districts

Be It Resolved by the Council of the City of Anchorage, Alaska:

1. Resolution No. 545, passed and approved the 1st day of March, 1950, directed the City Manager to proceed with the installation of sanitary sewer facilities in sewer improvement districts Nos. 1, 2, 3 and 4 created by said resolution; said resolution found that the property to be specially benefited by said improvements consisted of each lot in said described sewer improvement districts in proportion to the area thereof; said resolution further directed that two-thirds ( $2/3$ ) of the cost of the improvement be assessed against the property specially benefited in proportion to the benefit received by each lot in accordance with the area of each lot in the aforementioned sewer improvement districts and pursuant to Subsection 104.2, Chapter 3, Anchorage General Code, and that the City Manager keep a record of all the expenses of the improvements.

2. It is hereby found that the cost of said improvement is the sum of \$424,792.29. Attached to this resolution and incorporated herein as if expressly set out in the body hereof and attached hereto as "Exhibit A" is the correct account of said improvements, entitled "Assessment for Sewers Constructed During 1949 and 1950."

3. It is hereby determined that the benefit received by each of the lots contained in the afore-



mentioned sewer improvement districts is as shown in Exhibit A and therefore the amounts so shown should be assessed.

4. The Municipal Assessor is hereby directed to make the above referred to assessment against each of the above referred to lots and enter the same upon an assessment roll by him prepared in form suitable for the signature of the Mayor and his certification that it is the assessment roll as finally settled by the City Council; said assessment roll shall contain a brief description or designation of each tract of property, the name of owner or reputed owner thereof, and the amount of the assessment.

5. Objections to said assessments, if any, shall be heard at a special Council meeting on September 29, 1950, at eight o'clock p.m. in the Council Chambers, City Hall, Anchorage, Alaska.

6. The City Clerk is hereby directed to send a written notice, by mail, to each owner of the properties against which such assessment is made, which notice shall state the amount of the assessment against such particular tract and the time fixed by the Council for hearing objections; said notice shall be mailed at least fifteen (15) days before September 29, 1950.

Publication of this Resolution shall be made by posting a copy on the City Hall Bulletin Board for a period of ten (10) days following passage.

First reading—September 6, 1950.

Second reading—September 13, 1950.

Passed and approved this 13th day of September, 1950.

/s/ Z. J. LOUSSAC,

Mayor, City of Anchorage.

Attest:

/s/ B. W. BOEKE,

City Clerk."

Copy

9-13-50—page 113, vol. 8: "The City Engineer reported on the following: That two meetings were held with representative of the Stateside Construction Company, relative to extra costs claims submitted by their company in connection with the Sewer contract.

9-19-50—page 115, vol. 8: "Mrs. John Coats spoke briefly regarding a recent Sewer Assessment notice on her property located at lots 4 and 5, N $\frac{1}{2}$  block 21, South Addition and requested that the amount be cancelled due to the fact that she had given an easement three years ago for the sewer to be installed at the New Chugach School and was given permission at that time, to connect to the school sewer.

"After considerable discussion it was moved by Rozell that the Sewer assessment levied on lots 4 and 5, N $\frac{1}{2}$  block 21, South Addition be cancelled. After further discussion the motion was withdrawn and the matter referred to the City Manager."

9-29-50—page 122, vol. 8: "The City Manager announced that the hearing to be held in regard to the Sewer Assessments in District Nos. 1, 2, 3 and 4 would begin and requested the City Engineer to explain to those present the basis upon which the As-

sessments were made and to outline the areas comprising each district.

The meeting was recessed at 8:15 p.m. to reconvene at 8:30 in the KENI Studio, located in the 4th Avenue Theatre Building, in order to accommodate the large audience which had gathered in the Council Chambers of the City Hall.

The meeting resumed at 8:40 in the KENI Studio.

The City Engineer outlined the method which had been used in determining the assessments and the area of each district.

“Oral and written objections were heard, and recorded, from property owners for the Council’s consideration. Following is a record of those who spoke or entered written objections to the assessment:

### Sewer Hearing

Special Meeting of the City Council Held on September 29, 1950, KENI Studio at 8:30 p.m.

“Mr. Ed. Barber, Acting Mayor: The hearing is now reconvening on sewer questions. Any persons wishing to be heard may present their questions to the City Engineer. We will start with District No. 1.

Rosenkrantz: Lot 7 and 8, block 27C, N $\frac{1}{2}$  block 33A, N $\frac{1}{2}$  Block 33B. I was assessed \$160.00 per lot but *not* it is \$336.77 per lot. Does this include water also?

Mr. Tryck: No, it does not include water. The estimated assessment was \$190.00 and at this time is \$336.77. The reason for the higher assessment is that the contract cost was considered higher than estimated cost of the project.

Rosenkrantz: That is more than double. It should not be 100% more. The petition I signed was for \$160.00.

Tryck: It was \$190.00.

Rosenkrantz: The lots assessed are nothing but a swamp. It isn't worth the price because no one could build there. The upper lots may be all right. That's on 33A, the S1½ of 33A.

Tryck: There is low land there, some of it in water.

Rosenkrantz: The corner lot is the worst of all and it is assessed as high as the best one.

Tryck: All lots are assessed on a unit price basis for the purpose of this sewer assessment. The lot over here is assessed the same as the lot over there.

Rosenkrantz: I can't sell for anywhere near that price. No one would want it. No one could build on it. It is not habitable. It is swamp. How about the water?

Tryck: Water has no connection with this.

Rosenkrantz: How can we value the property?

Tryck: Water information is available at the City Hall to anyone that asks for it.

Rosenkrantz: I have already been there.

Barber: This is a sewer question.

Rosenkrantz: Are property taxes on the same basis?

Tryck: There is no assessment for water mains. You pay \$161.00 at the time you connect to the main.

Rosenkrantz: I have to pay \$161.00? I have already paid for water.

Barber: Next person to be heard?

Mrs. Frank Moore: Lot 3, block 38D. Assessment



\$376.00. Why am I assessed \$376.00 when the assessment in block 33 is \$336.77?

Tryck: Your lot is slightly larger.

Moore: It serves the same amount of frontage. It costs more to connect from the sewer to the house on my lot and it is a shorter lot. It is 165 feet and I gave the city 10 feet for an alley.

Tryck: I can't answer that question.

Moore: I would like to have it looked into and figured on a basis of length rather than frontage.

Mr. Geo. McLaughlin, Attorney, representing property owners in District No. 1, interrupted at this point and asked that he be allowed to present objections intoto. Permission granted by Barber and Mr. McLaughlin read his objections as stated in his notice addressed to the City Council under date of September 29, 1950.

Mr. Herold Stringer, Attorney: I join with Mr. McLaughlin in protesting the assessments for the reasons that Mr. McLaughlin has just stated.

Hauser: I own property in the First Addition, South Section. Do you go by certain lot sizes or does it make a difference on the frontage of the lot?

Tryck: In this area, the assessments were computed on frontage.

Hauser: Then the assessments are for the idea of the trunk line whether or not the property is served by it. Is that right?

Tryck: That is correct.

Hauser: People on 11th Avenue have connections from various other sections, particularly at the time CAA was put in my—interrupted by

Tryck: That was before my time.

Hauser: There are people living on 10th and

12th that will never have laterals. Are they to be assessed because they are adjacent to that trunk-line?

Tryck: No, in general we are not including anyone in the District who had sewer service.

Hauser: If you do not have a full lot and have a vacant lot next to you should you be assessed for part of a lot? My particular case, I live at 1230 11th and have two lots in block 25A, lots 13 and 14. One lot is 44x140 feet, the other is 4x140 feet and both are equally assessed.

Tryck: One lot should have been less than the other.

Hauser: Marion Pendergrass was the original owner and he sold to L. J. Merritt but it did not get on the records.

Tryck: That can be corrected.

Hauser: Do you say that people that are not paying for service should be assessed for the trunk line?

Tryck: That is a broad question to answer. In some instances lines are too small or overloaded and are not adequate to serve three or four houses. Individually those lines will have to be replaced and very likely will be carried into this sewer and it will be only fair to pay the cost of the sewer.

Hauser: Now or when they are connected?

Tryck: Now.

Hauser: It is possible but not likely.

Mr. Stringer interjected and requested that Mr. McLaughlin be heard.

Hohman: E $\frac{1}{2}$  lots 3 and 4, block 42C, South Addition—\$366.00 assessment.

Tryck: We are trying to prevent the splitting of lots in half.

Hohman: It is 70x100 feet.

Tryck: 100 feet sewer will serve four lots.

Hohman: But it is not possible to get. How much would it cost?

Tryck: It would depend on who put it in.

Hohman: That would be more than the value of the lot I suppose.

Tryck: No, it probably could be put in for \$350.00 for 100 feet.

Banks: Lot 5, block 27C. How was the accounting for the assessments arrived at? Was Mr. Tryck responsible, the local council or some president down in the States. How were the costs arrived at for the individual owner?

Tryck: The costs were based on nothing larger than a 6 inch line. The City assumes the cost of anything larger. The unit cost of excavation depends on the contractor. The price varies.

Barber: Was the cost legally determined?

Tryck: Yes, it was legally determined. It is incorporated in the Anchorage General Code by Ordinance. Trunk assessments paying the cost of the large sewer which goes in to serve the entire area.

Geo. Cook: Lot 6, block 41A, South Addition. Lot 1, Block 41D, South Add. Was the contract on a cost-plus basis or flat sum?

Tryck: It was a unit price contract.

Cook: Will property owners outside the city limits pay the assessment?

Tryck: Only one property owner to date that has any permission to connect to the sewer and they are

paying the same as people inside are paying. They agreed to pay the same taxes. We had to go through some private property to get an easement and the City agreed to allow them to connect to the line.

Property Owner name not given: Lots 6, 7, 8, block 43B—When is sewer assessment due?

Sharp: In equal installments over a three year period. No earlier than sixty days after Council acts on the levy.

Property Owner: I have spent approximately \$2,000.00 on wells, cesspools and sewer. The best I can figure now, if I use the City's water and sewer it will cost me around \$3,000.00 more. The sewer I have has been in about five years and is good for another ten to fifteen years more. I don't care to give the City \$3,000.00. This forces me to sell my property even at a loss because I will not be able to pay the assessment. It is entirely unjust and unfair.

Geo. McLaughlin: The Council here tonight represents myself, Mr. Davis, Cuddy and Kay and Plummer and Arnell.

Barber: Go ahead.

McLaughlin: This protest is made in accordance with the provisions under Section 16-1-85 of Alaska Compiled Laws, Annotated 1949. Reference made to Section 16-181, Section 16-182; case No. 293577, Federal, Ketchikan Delinquent Tax Roll, October 5, 1920.

Property Owner name not given: Lot 38, South  $\frac{1}{4}$  lot 4, 5, 6; it is not unusual for assessments to be levied and payments made over a 15 to 20 year period. I do not see just why all the property owners that now have lots here should foot the bill. I think



after the legality question is ironed out, you should give due consideration to the people who have to make a living and raise a family.

Barber: Your recommendation is that the Council consider the matter of spreading the sewer assessments over a greater length of time. The suggestion you have made is an objection that the Council can consider.

Triber: Lot E $\frac{1}{2}$ , block 42C (although Mr. Triber was asked to repeat his lot number, I was unable to hear it or his comments.)

Property Owner name not given: Lot 11, block 25B. This property owner went into a lengthy discussion about his efforts to get the depth of a sewer which was built by a private contractor. Could not get easement to connect to sewer but "Northwest" got it overnight. Finally got easement for sewer and had to raise bathroom one foot to get drainage. Water backed up, flooded basement, yet I got a bill for \$60.

Tryck: Unfortunately you were on an old private sewer line. You never paid as assessment for a private system. These people have been asking to pay for sewer service. \$59.00 assessment was for sewer put in on 15th Avenue which could be connected into your house.

Ed. V. Davis, Attorney, representing several property owners in the South Addition, made reference to the following property owners and presented notices:

Wr. Renfrew, N 75 ft. S $\frac{1}{2}$  lot 10, S $\frac{1}{2}$  block 28.

Mary E. Fasnach, Tr. 7, N $\frac{1}{2}$  Block 28, South Addition and the W82 ft. lot 9, N $\frac{1}{2}$  Block 28, South Addition.

Geo. B. Grigsby, Trustee for Ken Luse, lot 2, block 37D.

A. L. Engebret, E 50 ft. lot 9, N $\frac{1}{2}$  Block 28; S 90 ft. of which is in N $\frac{1}{2}$  block 28.

\*John Wik, lot 11, block 119, Original Townside, District No. 4 does not belong here.

Barber: This will be investigated and there is no objection to having these notices filed in connection with the hearing this evening.

Stringer: I would like to know whether or not you wish me to prepare similar lists as those prepared by Mr. Davis or is the earlier protest sufficient?

Barber: It would be best if protests were filed in writing.

Stringer: Are the oral protests sufficient for the moment?

Barber: It would be well to file protests in writing and file same.

J. C. Morris: Lot 2, block 48; lots 5, 7, 8, 13, 14, 15, 16, 17, 18, block 40A; lots 8, 9, 11, 12, block 40B; lots 2, 3, 4, 5, 6, block 40B; lots 13, 14, 15, 16, 17, 18, block 40B, S $\frac{1}{2}$  block 34 and lots 11, 12, block 38A of the South Addition. Also lot 2, block 18, East Addition.

Stringer: Will prepare letters for the above.

Ashley: Lot 10, block 42A. I ask that the Council assess a general tax and the whole sewer improvement be taken out of the General Tax Fund.

Heath: Lot 3, 4, block 44C; presented claim for damages to his property.

Tryck: We have Mr. Heath's claim and before



the contract is fnaled out we will require that all claims be satisfactorily taken care of.

King: Lot 3, block 43B; the benefit is not equal and the assessment is not fair.

Major Allen: Lot 11, block 42A, South Addition: I object to the double assess.

Albert Mason: Lot 1, block 40A; I do not think I should be assessed for something we do not have.

Tryck: That is something to be determined.

Mason: When the contractor is paid we should be assessed but not before. Why are we being assessed for something we do not have.

Harold Drew: Lot . . , block 45, South Addition; how is it prorated?

Tryck: It is based on the sq. ft. area of property you own.

Drew: I think the amount is excessive and would like a longer period of time to pay.

Tulford: Lot 7, block 40B; I got permission to build a cesspool. There was no sewer near me. I object to not being informed and not having a notice in the paper.

Knight: Lots 1, 2 and 3, block 33A; have house on lot 1 and part on lot 2. Received trunk assessment for lot 3 which adjoins a manhole at the corner of that particular lateral. In looking over ground there I cannot see any way that I can possibly build on this lot No. 3, and reach the manhole which is only 7 feet deep. Elevation of this manhole is 70.98, basement 69.63, 100 ft. area. Cannot get from my basement into the manhole. The house I would build on lot 3 would have to be lower than my present house. I will get no particular benefit from lot 3. Three year

period is pretty stiff for assessment. Think ten year pay period and up to twenty would be better.

Curtis: Lot 11, block 36B; sewer goes in alley between I and K, then turns down alley over to 15th Avenue. Is there going to be another assessment when that sewer goes in?

Tryck: No, because you are now set up to pay the lateral assessment, as well as the trunk assessment. If another lateral goes in and you have already paid for a lateral, there could be no assessment.

Curtis: Could I hook into another sewer line?

Tryck: Yes, Sir, that is correct.

Tulford: Lot 7, block 40B; I suggest that the City do something about the sewer which is a block away from me. Children play there and the sewer emptys right out there. There is no precaution taken to protect the children and eliminate the hazard.

Tryck: I was down looking at it and am attempting to take our own equipment or hire someone to remove the health hazard that exists there.

Francis Bowden: Lots 7, 8, block 120, Original Townsite; have never had sewer or water. Want to go on record that I object to manner of assessment and I know a number of people in same location feel the same way. I feel that a drainage outfall that I could not get to would not be good for my property. I cannot see the legality of it. I signed a petition for the sewer to go down my alley.

Otto Tiede: Lot 9, block 116, Original Townsite; have been connected with City sewer for 10 years. When they put in the new sewer they tore up our place and they tore up our fence. When they tore up

the ground my pipes froze. Have to let water run to keep them from freezing.

Tryck: But you have sewer service now and you have been assessed for the new sewer.

\* \* \* \* \*

Page 135, vol. 8: "It was moved by Setchfield and seconded by Peterson that the meeting recess to reconvene in thirty minutes in the Council Chambers of the City Hall. All voted in the affirmative.

10-4-50—page 138, vol. 8: "The Hearing on Sewer Assessments in Sewer Districts 1, 2, 3 and 4 was resumed."

"Mr. George McLaughlin, attorney representing owners of property in Sewer District No. 1, in the South Addition, spoke briefly and submitted written objections to the Sewer Assessment. Following are those having filed written objections to Sewer Assessments in Sewer Districts No. 1, 2, 3, and 4 as of this date:

Refer back to pages 123 through 134.

"The City Attorney spoke briefly regarding the principles and methods used for the assessment of Public Improvements."

Page 139, vol. 8: "A discussion was held regarding the verbal and written protests of assessments in Sewer Districts 1, 2, 3 and 4. The protests heard or submitted in writing generally fall into the following categories:

1. Trunk benefit—Those present and the written protests entered into the record expressed the feeling that that portion of the assessment for the trunk

benefit should not be levied until lateral lines are installed.

It was moved by Setchfield and seconded by Rozell that the following policy be adopted in regard to "Trunk benefit":

### Policy

The benefit to the property from the installation of sewer trunks even though the laterals have not been installed is real as the trunk line is an integral part of the system and is required to serve the area so outlined as benefited from the trunk installation. Therefore, the assessment shall stand.

All voted in the affirmative.

2. Period of payment; excessive cost—Protestants, in general, felt that the cost of the assessment was high and that the period of years (three years) for the payment is not sufficient.

It was moved by Setchfield and seconded by Rozell that the following policy be adopted in regard to "Period of payment; excessive cost":

### Policy

In view of the high construction cost, the assessment is high and no one disputes this fact. Accordingly, the period for payment shall be extended to five (5) years and the General Fund Budget established to provide for the difference in funds required to meet bond maturities.

All voted in the affirmative.

3. Benefit to the irregular shaped and/or larger than standard lots (7000 sq. ft.) with large portions thereof unsuitable for residential development without prohibitive site preparation cost—there is justi-



fication for this third protest and an adjustment is recommended.

It was moved by Davis and seconded by Krause that the following policy be adopted in regard to objection No. 3:

Policy

If all of the following factors exist:

- (a) The lot is in excess of 7000 sq. ft. in area.
- (b) Approximately 20 to 25 per cent of the lot is unsuitable for normal residential development because the grade exceeds 60 per cent.
- (c) The lot is in Residential Zone No. 1.
- (d) The lot is not under a special permit for construction of multiple units (larger than duplex) since the enactment of the Zoning Code.

Then the assessment for such lots shall be reduced in direct proportion to the portion of the lot unsuitable for residential development. In no case shall the assessment levied be less than the amount levied for a standard size lot (7000 sq. ft.), in the same improvement district.

All voted in the affirmative.

4. Lots served and connected to the City Sewer System where no assessment was levied against the lot and other lots were assessed for the cost of the same sewer line.

It was moved by Rozell and seconded by Setchfield that the following policy be adopted in regard to objection No. 4:

Policy

In such cases both trunk and lateral assessments shall be levied.

All voted in the affirmative.

5. Lots that cannot be served by a sewer lateral because of the difference in elevation between the sewer lateral and building on the lot will not permit gravity flow; but can be served by the installation of a sump pump.

It was moved by Davis and seconded by Setchfield that the following policy be adopted in regards to objection No. 5:

#### Policy

In the above case, the trunk assessment shall be levied. The lateral assessment shall be levied, less the cost of installation of the sump pump. Such cost to be approved by the City. In the event the cost of the sump pump exceeds the lateral assessment, the City shall not be responsible for the additional cost.

All voted in the affirmative.

6. Lots where the elevation of the lateral or lot is such that the cost of connection is excessive and the lot can be more feasibly served by subsequent installation of laterals in another location.

It was moved by Krause and seconded by Peterson that the following policy be adopted in regards to objection No. 6:

#### Policy

Trunk assessment shall be levied. Such property shall be eliminated from the lateral benefit area and the assessment deleted.

All voted in the affirmative.



It was moved by Peterson and seconded by Krause that the following policy be adopted in regards to all four Sewer Improvement Districts:

### Policy

That the City apply the policy adopted at this meeting to all properties in the four sewer improvement districts, regardless of whether or not a formal protest has been filed, or regardless of whether or not the property owner has appeared at the protest meeting of September 29, 1950; that the City, in future years, waive any right it might have to adjust assessments levied because of failure to so personally appear or file written protest; that the protest hearing be adjourned; that the City Manager correct the assessment roll as originally made and present it to the City Council on or about October 6, 1950 for final settlement by the Council and for certification by the Mayor.

All voted in the affirmative."

### Certification

I, B. W. Boeke, keeper of the minutes of the City Council, do certify that the foregoing are true excerpts from volumes 7 and 8, Minutes, City of Anchorage, Alaska, in regard to the construction and assessment of a sewer line in the area known as Sewer Improvement District No. 1.

[Seal]            /s/ B. W. BOEKE,  
City Clerk.

[Endorsed]: Filed Dec. 26, 1950.

[Title of District Court and Cause.]

MOTION IN RESPONSE TO PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT

Defendants move as follows:

I.

That plaintiffs' motion for summary judgment be dismissed.

II.

This motion is based upon the fact that in this action there are many genuine issues as to material facts; the existence of genuine issues as to material facts is shown by the complaint, answer and affirmative defenses on file herein, affidavits in support of plaintiffs' motion, and the attached affidavits of the defendant City of Anchorage.

III.

This motion is further based upon the fact that the supporting papers attached to plaintiffs' motion for summary judgment are not what they purport to be, as shown by the attached affidavit of John S. Hellenthal, Robert E. Sharp, and Betty Kerby, Acting City Clerk, and do not raise any issues of law in this case.

Dated at Anchorage, Alaska, this 4th day of January, 1951.

/s/ JOHN S. HELLENTHAL.

Subscribed and sworn to before me this 4th day of January, 1951.

[Seal]

/s/ ESTHER THOMPSON,

Notary Public for Alaska.

My Commission expires 9-10-52.

Acknowledgment of Service attached.

AFFIDAVIT OF ROBERT E. SHARP, BETTY  
KERBY, and JOHN S. HELLENTHAL

United States of America,  
Territory of Alaska—ss. .

Robert E. Sharp, Betty Kerby, and John S. Hellenthal, being first duly sworn, under oath, each for himself and not one for the other, depose and say:

1. That we are City Manager, Acting City Clerk, and City Attorney for the City of Anchorage, respectively.

2. That the 16 page paper entitled "Excerpts from the Minutes of the Common Council of the City of Anchorage in regard to the Trunk Outfall Sewer and Sewer in the South Addition to the Original Townsite of Anchorage" is not the full written record from the minutes of the Anchorage City Council in regard to the construction and assessment of a sewer line in the area known as Sewer Improvement District No. 1, as certified by B. W. Boeke, City Clerk, on page 16 thereof; that omitted from said excerpts are all references to the awarding of the contract with the Stateside Construction Company by the City of Anchorage on the 29th of June, 1949 and on the 30th of June, 1949; that further omitted therefrom are any and all reference to the passage and enactment of ordinance 1007 by the Anchorage City Council on the 20th of April, 1949; that further omitted are many references to this matter occurring after October 4, 1950, during which period the assessment roll was finally settled; that

plaintiff's motion includes no minutes after October 4, 1950; that there may be further material omissions, but affiant Betty Kerby has not had adequate opportunity to check the voluminous records of council meetings completely in order to ascertain other omissions.

3. That Ordinance No. 203 of the City of Anchorage and Ordinance No. 216 of the City of Anchorage, attached to plaintiffs' motion for summary judgment were repealed and no bonds were sold pursuant to their terms; that this repeal was accomplished on 19 October, 1949, and said ordinances have no relation to the levying of the special assessment for sewer improvement in the area known as Sewer Improvement District No. 1.

4. That whatever protest was made by Ashleys failed to specify any reason why the assessment was claimed void.

5. That the defendants have a real and meritorious defense to this action as shown in the answer and affirmative defenses on file herein.

6. That involved in this controversy are issues of great public moment. That the amount involved if these assessments are determined to be illegal is approximately a quarter of a million dollars, which amount must be paid by the taxpayers in some form.

7. That but thirty days have elapsed since the filing of this action. That it is impossible to analyze the many issues of fact and law herein presented in the time allowed.

8. That petitions for the sewer construction which is the subject of this action were all in the

form of the "Explanation of Sewer Assessments" and "Petition for Sewers" which are attached hereto and made a part hereof.

Dated at Anchorage, Alaska, this 4th day of January, 1951.

/s/ ROBERT E. SHARP,  
/s/ BETTY KERBY,  
/s/ JOHN S. HELLENTHAL.

Subscribed and sworn to before me this 4th day of January, 1951.

[Seal] /s/ ESTHER THOMPSON,  
Notary Public for Alaska.

My Commission expires 9-10-52.

## EXPLANATION OF SEWER ASSESSMENTS

History of this Sewer Improvement; Bonds;  
Assessment; Construction Contract

On March 27, 1947 the property owners of Anchorage voted to spend: (a) \$225,000 for a trunk outfall sewer line located along First Avenue and emptying into Knik Arm, and for another trunk outfall sewer line along Chester Creek (See attached map particularly Sewer Improvement District No. 4); (b) \$225,000 to expand the existing sewer system (See Map, particularly Sewer Improvement Districts Nos. 1, 2 and 3).

Both of the above improvements were to be financed by the issuance of \$450,000 bonds, which bonds were sold April 1, 1949, and further the City



is authorized to collect special assessments to defray part of the cost of the improvements.

The contracts for the above improvements will soon be awarded and since these improvements will benefit certain property owners in the City greatly, the City has determined in accordance with territorial law and the ordinances of the City of Anchorage to assess two-thirds of the cost of these improvements to the property owners so specially benefited by the improvement.

#### Four "Sewer Improvement Districts" Created

Plans for the sewer improvements have been drawn and are available for inspection in the office of the City Engineer, City Hall, Anchorage. In order to facilitate petitioning for and the collection of the various special assessments that will be necessary to finance these projects, the area to be benefited by the sewers have been divided into four "sewer improvement districts", which districts appear on the map attached to the accompanying petition. The map shows the types of lateral and trunk sewers that will be installed in each district, if the consent of the property owners is obtained.

#### Lateral Sewers

In Sewer Improvement Districts Nos. 1, 2, 3 and 4 there are located lateral sewers. The lateral sewers benefit particular blocks and are very local in character. Two-thirds of the cost of these lateral sewers will be assessed against the owners particularly benefited and these lots so specially benefited are indicated on the attached map by being criss-crossed in red.



## Trunk Sewers

In Sewer Improvement Districts Nos. 1 and 4, in addition to the lateral sewer, there are located trunk sewers which benefit a much greater area than the lateral; hence two-thirds of the cost of these trunk sewers will be apportioned over a greater area, which area is indicated on the attached map by green criss-crossing.

## Both Lateral and Trunk Sewers Benefit Certain Areas

It will be noticed that in Sewer Improvement Districts Nos. 1, 2 and 4 some lots are criss-crossed in both green and red. The owners of these lots are being requested to pay their proportionate share of both the two-thirds cost of the trunk sewers benefiting their properties and the lateral sewers benefiting their properties.

## Estimate of Cost

Until the final bid is awarded for the sewer project, it is not known what the actual assessable cost to the property owners will be. The City Engineer estimates, however, that the cost of sewer improvements in the four Sewer Improvement Districts will be as follows:

## Estimate

Note: This estimate is property owner's share (City's  $\frac{1}{3}$  excluded).

Sewer Improvement District No. 1 (50x140 foot Lot): Lateral benefit, \$148.00; trunk benefit, \$42.00; total \$190.00.

Sewer Improvement District No. 2 (50x140 foot Lot): Lateral benefit, \$163.00; trunk benefit, \$24.00; total, \$187.00.

Sewer Improvement District No. 3 (50x140 foot Lot): Lateral benefit, \$149.00; trunk benefit, none; total \$149.00.

Sewer Improvement District No. 4 (50x140 foot Lot): Lateral benefit, \$223.00; trunk benefit, \$42.00; total, \$265.00.

These estimates may vary, but it is believed from all information available to the City at the present that these estimates are reasonably correct.

### Time of Payment

The assessments contemplated, if the necessary petitions are secured will be levied as soon as the improvements are complete and the final cost is known. The assessments will be payable in three annual installments for those who choose to pay them in this manner. It is believed that property owners who desire to pay their assessment in one lump sum will be allowed a discount of at least  $3\frac{3}{4}\%$ , if they so elect.

### Method of Signing

If a person owning property in one of the four sewer improvement areas desires to obtain a sewer, he should sign the attached petition as the owner of the property in the space above the line designated for his lot and stating the block thereof. He will thus

request that the sewer assessment or assessments, depending on the location of his property, be levied against his property.

### Definition of Owner

The owner of a property is in practically all cases the person whose name appears on the tax rolls of the City as such owner. The tenant or occupier is not necessarily the owner. A person may sign for the owner if he has the written power of attorney from the owner granting him the right to sign the petition. If a person signs without written power of attorney for an owner he is guilty of forgery. Likewise, one who assists one not the owner to sign the attached petition or any similar petition is guilty of forgery.

### Procedure after Petition is Presented to Council

If this petition is signed by all of the owners of at least one-half in value of the property specially benefited by the improvement and the Council so finds this to be true and further finds that the requested improvement should be made, two-thirds of the cost will be assessed against the various property owners.

Careful account will be kept of all expenses of these improvements and when the improvements are completed the City Council will assess two-thirds of the cost thereof against the various properties benefited on a special assessment roll similar to the general property tax roll.

When the assessment is thus entered on the roll the City Council will fix a time to hear objections to the amount of the assessments, if there are any, and mail a notice to every property owner against whose property an assessment is made, stating the amount of the assessment against his property and the time fixed for hearing objections.

At the hearing persons can complain about their assessment and if it is in error, it will be corrected. After corrections are made, the assessment roll will be signed by the Mayor, the assessment will be levied against the property and time for payment and manner of payment and penalties for delinquency will be determined.

After the time of payment, etc., is determined, each owner of property assessed will be notified in writing of the amount of his assessment, the designation of the property assessed, the time of delinquency and the amount of the penalty for late payments and provision for installment payments in three annual installments.

Thereafter, if the assessments are not paid they shall be collected in the same manner as general taxes.

DONALD R. WILSON,  
City Manager,  
City of Anchorage.

### PETITION FOR SEWERS

We, the undersigned, pursuant to the provisions of Title 16, Chapter 1, Section 81, ACLA 1949, and the ordinances of the City of Anchorage, hereby peti-

tion the City of Anchorage to construct necessary sewer facilities, including trunk and lateral sewers, to serve the following properties, of which we are among the owners, and which are included in the following described Sewer Improvement Districts:

### Sewer Improvement District No. 1

Beginning at the intersection of 12th Avenue and "U" Street, where the corporate limits of the City meets the boundary of the Alaska Railroad Terminal Reserve; thence south along "U" Street to a point 187.50 feet from the intersection of "U" Street and 13th Avenue; thence east parallel to Scenic Way to the northeast corner of Block 47 of the South Addition; thence south along "S" Street a distance of 375 feet; thence southeast to a point midway on the south border of Block 46 of the South Addition, which point is on the south corporate limit; thence east along the corporate limits of the City or 16th Avenue to where it intersects with "C" Street; thence north along "C" Street to 12th Avenue; thence west 500 feet along 12th Avenue; thence north at right angles to 11th Avenue; thence west along 11th Avenue to "F" Street; thence south along "F" Street to 12th Avenue; thence west along 12th Avenue to "G" Street; thence north along "G" Street to 11th Avenue; thence west along 11th Avenue to "H" Street; thence south on "H" Street to 13th Avenue; thence west 750 feet along 13th Avenue; thence north at right angles to 12th Avenue; thence west along 12th Avenue to "L" Street; thence north 150 feet along "L" Street; thence west 300 feet at



right angles through the alley to "M" Street; thence north on "M" Street to 11th Avenue; thence west on 11th Avenue to "N" Street; thence south on "N" Street 150 feet; thence west at right angles through the alley to the extension of "R" Street; thence north at right angles 150 feet to 11th Avenue; thence west along 11th Avenue to the east border of the Alaska Railroad Terminal Reserve; thence southwest along the east boundary of the Alaska Railroad Terminal Reserve to the point of beginning.

#### Sewer Improvement District No. 2

All and whole of Blocks 7A, 7B, 6A and 6B of the Third Addition to the Original Townsite of the City of Anchorage, Alaska, and Blocks 8 and 9 of the Original Townsite of said City.

#### Sewer Improvement District No. 3

All lots North of Lots 7 and 24 in Block 16 of the East Addition to the City of Anchorage and all of Block 18 of said East Addition to the City of Anchorage.

#### Sewer Improvement District No. 4

Beginning at a point in the northeast corner of Block 36 of the East Addition of the City of Anchorage or at the corner of First Avenue and Gambell Street; thence south along the east corporate line of the City of Anchorage to the corner of 4th Avenue and Gambell Street; thence west along 4th Avenue to a point 200 feet west of the northwest corner of the intersection of Cordova Street and 4th Avenue; thence north at right angles to 2nd Avenue; thence west along 2nd Avenue to "E" Street; thence north

along "E" Street 150 feet; thence west at right angles through the alley a distance of 200 feet; thence north at right angles 150 feet to 1st Avenue; thence east along 1st Avenue to the point of beginning.

We hereby agree to the levy of a special assessment against our properties, which will be specially benefited by said sewers, in an amount equal to two-thirds of the cost thereof. We represent that we are the owners of at last one-half in value of the property to be specially benefited by these sewer improvements. We agree to pay said two-thirds of the cost in annual installments over a period of three (3) years. We understand that our share of the assessable cost is to be based upon the area of our lots and the frontage thereof.

We further understand that those of us who own properties shaded in red on the attached map (See Ex. A) will all pay our two-thirds share of the cost of lateral sewers or those serving particular streets. Those of us who own properties in areas which are shaded both red and green further understand that in addition to the cost of lateral sewers we will pay two-thirds of the cost of the trunk sewer benefiting our property; there being three such trunk sewers, two in Sewer Improvement District No. 1 (along 15th Avenue and in Chester Creek valley) and one in Sewer Improvement District No. 4 along First Avenue, all such trunk sewers being indicated on the Map, or Ex. A. We further understand that those of us owning property in the area shaded only in green will be assessed for only our share of the two-thirds cost of the trunk sewers, as

described in the preceding sentence, and, which benefit our properties.

We represent that we have read or have had explained to us the paper attached to this petition, entitled "Explanation of Sewer Assessments."

Name of Property Owners per tax rolls		Assessed value to be filled in by City Assessor
Lot and Block		
.....	.....	.....
.....	.....	.....
.....	.....	.....

[Endorsed]: Filed Jan. 4, 1951.

[Title of District Court and Cause.]

ANSWER

The defendants in answer to plaintiffs' complaint allege:

I.

That they do not have sufficient information to form a belief as to the verity of Paragraphs I and VI of said complaint and for that reason alone they deny same.

II.

Admit the allegations of Paragraphs II, III, IV and V of plaintiffs' complaint.

III.

They deny that portion of Paragraph VII of said complaint which states that the defendant City of Anchorage "did wrongfully and unlawfully and without the consent of the plaintiffs \* \* \*"; they admit the other allegations of said paragraph.

## IV.

With reference to Paragraph VIII of said complaint, the defendants admit that by resolution and notice of special assessment the defendant City of Anchorage claims a first, prior and paramount lien upon Lot 10 of Block 42A of the South Addition to said City of Anchorage; except as herein expressly admitted, the defendants deny each and every allegation of said Paragraph VIII.

## V.

Defendants deny each and every allegation of Paragraphs IX and X of said complaint.

Further Answering the Complaint of the Plaintiff and as an Affirmative Defense Thereto Defendants Allege:

## VI.

That by virtue of Ordinance No. 193, passed and approved on 5 March 1947 a special election was held in the City of Anchorage and the two following propositions submitted to the voters thereat:

“Proposition 4: Shall the City construct two trunk outfall sewer lines to serve the City of Anchorage, and in payment of the construction costs thereof issue \$225,000 in General Obligation Bonds of said City?

“Proposition 5: Shall the City extend sewer lines in the Third and South Additions to the Original Townsite of the City of Anchorage, and in payment of the construction costs thereof issue General Obligation Bonds of the City of Anchorage in the sum of \$225,000 and in ad-

dition to the payment thereof from tax revenues of the City of Anchorage, pledge the proceeds of any special assessments which the City may by law assess and collect for such special local improvements?"

That said propositions carried at said election; that by virtue of Ordinances 1005 and 1007, both passed and approved 20 April 1949 the City of Anchorage borrowed money and issued bonds in the total amount of \$450,000 for the purpose of constructing the improvements authorized by the voters at said election; that Ordinance 1007 stated that special assessments would be levied for the purpose of partially financing said sewer improvements.

## VII.

That on February 10, 1949 by resolution the City Council decided as follows:

"Meeting was called to order by Acting Mayor Barber and the following members reported present: Barber, Krause, Rozell, Setchfield, Summers. Absent: Mayor Loussac and Councilman Scavenius.

"The method of assessment for the Trunk Outfall Sewer Project and Lateral Sewer Extensions and maturity dates for bonds to be issued to finance these projects was discussed.

"It was decided that, inasmuch as the Trunk Outfall Sewer was designed with sufficient capacity to permit expansion of the lateral extension system, a special assessment would not be levied except in those cases where sewer services will



be directly connected to the trunk sewer line. In these cases property owners will be assessed an amount equal to the normal cost of installing a lateral sewer line with sufficient capacity to serve their property.

“It was also decided that an assessment equal to the two-thirds of the cost of installing the Lateral Sewer Extensions would be levied.

“The City Attorney was instructed to draft an ordinance to promulgate these decisions and the Comptroller instructed to compute bond maturity dates accordingly.

“The previously established policy regarding installation of water mains and assessment for water connections was briefly discussed. It was decided that maturity dates for the bonds to finance the rehabilitation and water distribution system projects would be established on a long term basis consistant with the amounts thereof.

“Meeting adjourned 7:45 p.m.”

that on February 2, 1949 the City Council by resolution determined as follows:

“The City Comptroller requested that a policy be determined on the payment of paving, water and sewer assessments by the property owners.

“It was moved by Rozell and seconded by Summers that property owners be given 5 years in which to pay for paving assessments in 5 equal installments and 3 years on water and sewer assessments. All voted in the affirmative.”

## VIII.

That between April 1, 1949 and July 1, 1949 and prior to the award of the contract for the construction of the sewer improvements in question, petitions were circulated in accordance with territorial law and city ordinance and the requisite number of qualified persons signed said petitions in accordance with law and they were filed with the City Clerk during said period in accordance with law; that no signatures were obtained after July 1, 1949.

## IX.

That on July 1, 1949 a contract for the construction of sewer improvements in the areas known as Sewer Improvement District No. 1 and the areas known as Sewer Improvement Districts 2, 3 and 4 was signed by the Stateside Construction Company and the City of Anchorage; that bond in connection with said contract was furnished on July 15, 1949 and the contract was approved by the City Attorney on July 15, 1949; the construction work under the terms of said contract was commenced on about July 15, 1949 and continued thereafter.

## X.

That in the midst of the sewer construction, and on 2 March 1950, on second reading, Resolution No. 545 was passed and approved by the City Council.

## XI.

That on 13 September 1950 the City of Anchorage passed and approved Resolution No. 570, after first reading on September 6, 1950, in compliance with territorial and municipal law governing special

assessments and assessed the cost of the improvement against the various tracts of the real property in proportion to the benefit received by each and established the date for hearing objections to said assessments and directed the City Clerk to notify by mail each owner of properties against which an assessment was made in accordance with law, which notification was duly accomplished.

## XII.

That on September 27, 1950 objections were heard to the special assessment levied by Resolution No. 570; that at said hearing plaintiff Ashley made no specific objection to the said assessment other than to state "I ask that Council assess a general tax and the whole sewer improvement be taken out of the General Tax Fund", and failed to point out errors or any inequalities that may have existed in the roll and further failed to submit reasons for amendments and corrections and have continued to so fail.

## XIII.

That the assessment roll was completed in accordance with law and with Resolution No. 577 passed on October 18, 1950, and notice of assessment with postage prepaid was mailed to the owner of each property assessed by the City Clerk, time of delinquency was fixed and statutory requirements were complied with; that pursuant to law the Clerk's affidavit of said mailing has been filed.

## XIV.

That the members of the City Council of Anchorage, Alaska, did not change and could not have

changed through election between April 6, 1949 and November 1, 1950.

If the Illegality Complained of in Plaintiffs' Complaint Consists of a Defect Regarding the date of Passage of Resolution No. 545 Above Referred to, Defendants Plead as a Second Affirmative Defense, as follows:

#### XV.

That plaintiffs knew that the improvement was being made, and that the sewers were being constructed and they possessed such knowledge from July 1, 1949 and thereafter; that plaintiffs knew that the improvement was contemplated and authorized at all times after the 27th of March, 1947 when a special election was held in the City of Anchorage pursuant to the terms of Ordinance No. 193, passed and approved 5 March 1947, heretofore referred to in this answer; that plaintiffs knew that the sewer improvement was contemplated and authorized on 20 April 1949 when Ordinance 1007 was passed and approved, said ordinance having provided for the pledging of amounts raised by special assessments toward repaying sewer bonds; that plaintiffs had actual knowledge of the improvement and of the fact that it was to be financed by special assessments at all times after 27 March 1947; that the sewer in the alley adjacent to plaintiffs' property was placed there in the first week of August of 1949; that plaintiffs acquiesced in said construction.

#### XVI.

That plaintiffs had knowledge at all times after



27 March 1947 that the public authorities intended and were making the improvement upon the faith that the cost thereof was to be paid by the owners of real property specially benefited by the improvement in proportion to the benefits so received by each tract of land, and that an assessment for that purpose was contemplated, and that it was not to be borne from the General Fund.

### XVII.

That if the defect complained of in the proceedings under which the improvement was being made consisted of late passage of Resolution No. 545, i.e., passage thereof on March 2, 1950 instead of the first week of July, 1949, this defect was a non-jurisdictional defect based upon a statute directory in nature and the plaintiffs did have knowledge of such infirmity or defect at all times after July 1, 1949.

### XVIII.

That special benefit accrued to the plaintiffs' property over and above that enjoyed by the citizens of Anchorage generally in that a sewer was constructed in the alley adjacent to plaintiffs' property which construction immediately enhanced the value of said property by reason of its availability; that the construction of an outfall sewer, which was constructed, also further specially enhanced the value of plaintiffs' property by reason of its availability.

### XIX.

That on March 2, 1950, plaintiffs did not appear and protest any claimed infirmity or defect in the proceedings at the time when Resolution No. 545



was duly passed and approved after a prior first reading thereof, nor did they appear at the protest hearing called on September 27, 1950, except as heretofore alleged in these pleadings.

## XX.

That by reason of the premises plaintiffs are estopped from the right to the relief prayed for in the complaint and have waived such right, if any they had; that plaintiffs have an adequate remedy at law; that plaintiffs have failed to exhaust the administrative and legal procedures available to them; that plaintiffs are guilty of laches in their application for claimed relief.

## XXI.

That defendant City of Anchorage has at all times herein mentioned acted in good faith in this matter; that no objections to the method or manner of assessing for this project were raised prior to September 27, 1950 by anyone.

## XXII.

That certified copies of all resolutions and ordinances pleaded herein are attached hereto and expressly incorporated in this answer and all affirmative defenses as if set out in full herein.

Wherefore, defendants pray that plaintiffs take nothing by their complaint and that defendants recover of plaintiffs their costs and disbursements herein.

/s/ JOHN S. HELLENTHAL,  
Attorney for Defendants.

United States of America,  
Territory of Alaska—ss.

Robert E. Sharp, first being duly sworn both on behalf of the City of Anchorage and on behalf of the individual defendants herein, namely, Z. J. Loussac and B. W. Boeke and himself, says:

That he is the City Manager of the City of Anchorage, a municipal corporation, and eligible to be served with process on behalf of said corporation; that he has read the foregoing Answer and knows the contents thereof; that the same is true to the best of his knowledge and belief.

/s/ ROBERT E. SHARP.

Subscribed and sworn to before me at Anchorage, Alaska, this 4th day of January, 1951.

[Seal]           /s/ JOHN S. HELLENTHAL,  
Notary Public for Alaska.

My Commission expires Oct. 8, 1953.

Acknowledgment of Service attached.

### ORDINANCE No. 193

Ordinance No. 193 of the City of Anchorage: To establish the date of a special election; to prescribe the qualifications of voters to be eligible to vote at said election; to designate the judge and clerks of such election; to provide for notice thereof and for the establishing of polling places; and to provide for the submission to said electors the following propositions:

\* \* \* \* \*

Proposition 4: Shall the City construct two trunk outfall sewer lines to serve the City of Anchorage, and in payment of the construction costs thereof issue \$225,000 in general obligation bonds of said city?

Proposition 5: Shall the City extend sewer lines in the Third and South Additions to the original town-site of the City of Anchorage, and in payment of the construction costs thereof issue general obligation bonds of the City of Anchorage in the sum of \$225,000 and in addition to the payment thereof from tax revenues of the City of Anchorage, pledge the proceeds of any special assessments which the City may by law assess and collect for such special local improvements?

\* \* \* \* \*

All in compliance with and as authorized by the Act of Congress of the United States, approved June 18, 1946, (H. R. 5112).

Section 1: Pursuant to the Act of Congress of the United States entitled "An Act to authorize the City of Anchorage, Alaska, to issue bonds in a sum not to exceed Five Million Dollars for the purpose of constructing, reconstructing, improving, extending, bettering, repairing, equipping, or acquiring public works of a permanent character and to provide for the payment thereof and for other purposes", (H.R. 5112) passed and approved June 18, 1946, a Special Election is hereby called to be held in the City of Anchorage, Alaska, on the 27th day of March, 1947.

Section 2: That at said Special Election there shall be submitted to the qualified electors of said

City, authorized to vote at said election as hereinafter provided, the following questions:

\* \* \* \* \*

Proposition 4: Shall the City construct a trunk outfall sewer line to serve the Third and South Additions to the Original Townsite of the City of Anchorage, the terminus of which line shall be near the mouth of Chester Creek, and a trunk outfall sewer line along First Avenue of the City of Anchorage, terminus of which line shall be on Knik Arm, adjacent to the City of Anchorage, and for the purpose of constructing said sewer outfalls and in payment of the construction costs thereof issue General Obligation bonds of said City in the sum of \$225,000, which bonds shall mature serially in from two to twenty years from date, and bear interest at a rate of not to exceed 5% per annum, as authorized by Act of Congress of the United States, H.R. 5112, approved June 18, 1946?

Proposition 5: Shall the City of Anchorage, Alaska, expand existing sewer facilities in the City of Anchorage, Alaska, and, for the purpose of expanding the present sewage system located in the said City, issue General Obligation bonds of said City in the sum not to exceed \$225,000 in payment of the costs thereof, which bonds shall mature serially in from two to twenty years from date, and bear interest at a rate not to exceed 5% per annum, and pledge the proceeds of any special assessments which the City may by law assess and collect for such special local improvements for the payment of the principal and interest of said bonds, all as authorized

by the Act of Congress of the United States, H.R. 5112, approved June 18, 1946?

\* \* \* \* \*

Section 3: All the qualified electors of the City of Anchorage whose names appear on the assessment roll of record, which roll shall be specially prepared for this election, for purposes of municipal taxation and no other persons shall be entitled to vote at said election. No special registration for this election prior to the date thereof shall be required but provision shall be made for registration of each voter at the time of receiving his or her ballot.

Section 4: Persons hereinafter named are designated as judges and clerks respectively for the voting precincts in the City of Anchorage as follows:

Precinct No. 1: Judges: David Strandberg, John M. Brown, Cecil Burgan; Clerks: Doris B. Reherd, Ada Snider.

Precinct No. 2: Judges: Margaret Renfrew, Delphine Abbott, G. E. Nitz; Clerks: Frank Bayer, Lucille Adams.

Section 5: For this election, two precincts are created, which precincts shall be defined as follows:

Precinct No. 1 shall comprise all of that area within the City of Anchorage lying East of the center line of F Street.

Precinct No. 2 shall comprise all that area of the City of Anchorage lying West of the center of F Street.

The polling places for the special election to be held under the provisions of this Ordinance shall be as follows:



Precinct No. 1: City Hall.

Precinct No. 2: Community Building, Lot 2, Block 28.

Section 6: Notice of the said election shall be given by posting written notice thereof at the United States Post Office in said City, on the bulletin board in the City Hall in said City, and at the corner of 4th Avenue and "E" Street in said City, all of which places are hereby found and declared to be conspicuous places within the corporate limits of said City. Said notice of election shall be posted at said designated places not less than twenty days prior to said election.

Section 7: Said notice shall be signed by the Mayor of said City and attested by the City Clerk, and shall be in substantially the following form:

#### Notice of Special Election

A Special Election will be held in the City of Anchorage, Alaska, on the 27th day of March, 1947, for the purpose of submitting to the voters listed on the last assessment roll of record of said City for purposes of municipal taxation, the following questions:

\* \* \* \* \*

Proposition 4: Shall the City construct a trunk outfall sewer line to serve the Third and South Additions to the Original Townsite of the City of Anchorage, the terminus of which line shall be near the mouth of Chester Creek, and a trunk outfall sewer line along First Avenue of the City of Anchorage, terminus of which line shall be on Knik Arm, adjacent to the City of Anchorage, and for the pur-

pose of constructing said sewer outfalls and in payment of the construction costs thereof issue General Obligation bonds of said City in the sum of \$225,000, which bonds shall mature serially in from two to twenty years from date, and bear interest at a rate of not to exceed 5% per annum, as authorized by Act of Congress of the United States, H.R. 5112, approved June 18, 1946?

Proposition 5: Shall the City of Anchorage, Alaska, expand existing sewer facilities in the City of Anchorage, Alaska, and, for the purpose of expansion of the present sewerage system in said city issue General Obligation bonds of said City in the sum not to exceed \$225,000 in payment of the costs thereof, which bonds shall mature serially in from two to twenty years from date, and bear interest at a rate not to exceed 5% per annum, and pledge the proceeds of any special assessments which the City may by law assess and collect for such special local improvements, all as authorized by the Act of Congress of the United States, H.R. 5112, approved June 18, 1946?

\* \* \* \* \*

The polling place will be at the City Hall and the Community Hall on Lot 2 in Block 28 in the City of Anchorage, Alaska, and the polls will be open from 8:00 a.m. until 7:00 p.m. of said day.

Those persons who are citizens of the United States, over the age of twenty-one years, and who are and have been bona fide residents of the Territory of Alaska continuously for a period of one year immediately preceding this election, and who have

been likewise bona fide residents within the City of Anchorage corporate limits for a period of at least six months prior to the date of this election, who are able to read the Constitution of the United States in the English language, and to write the English language, and whose names appear on the tax assessment roll of record of the City of Anchorage for purposes of municipal taxation, shall be qualified to vote at said election.

No special registration for this election prior to the date thereof shall be required, but provision shall be made for registration of each voter at the time of receiving his or her ballot.

\* \* \* \* \*

If 51% or more of the voters voting at said election shall cast their votes in favor of proposition No. 4, hereinbefore set forth, then the Common Council of the City of Anchorage proposes to issue General Obligation bonds of said City in the sum of \$225,000, at a rate of interest not to exceed 5% per annum, to pay for construction and installation of said trunk outfall sewer lines.

If 51% or more of the voters voting at said election shall cast their votes in favor of proposition No. 5, hereinbefore set forth, then the Common Council of the City of Anchorage proposes to issue General Obligation bonds of said City in the amount of \$225,000, at a rate of interest not to exceed 5% per annum, to pay for the expansion of said sewerage facilities and to pledge the proceeds of any special assessments which the City may by law assess and collect to secure the payment of said bonds.

\* \* \* \* \*

The Council, upon approval of all said propositions, or any one or more thereof, further proposes to issue said General Obligation Bonds to mature serially in from two to twenty years and offer said bonds for sale on competitive public bid.

The Council further proposes, by subsequent ordinance, to fix the interest rates, terms, conditions and maturities and redemption rights of said bonds and to establish special funds in which the revenues from said utilities, or as much thereof as will be necessary, shall be held in trust to pay the principal and interest of said bonds as the same accrue.

The Council further proposes that such ordinance or ordinances shall contain such other provisions as may be deemed by the Council necessary and expedient in order to facilitate the sale of said bonds or any portion thereof.

This notice is given pursuant to an Act of Congress approved June 18, 1943, and to Ordinance No. 193 of the City of Anchorage, Alaska.

.....

Mayor.

Attest:

.....

City Clerk.

Section 8: The form of the ballot shall consist of a separate statement of the propositions set forth in Section 2 of this Ordinance, and each proposition so stated shall be concluded by the following wording:

“For—Proposition 1” .....

“Against—Proposition 1” .....

Section 9: All the provisions of the laws of the United States and of the Territory of Alaska, and the general ordinances of the City of Anchorage relating to registration of voters, the manner of conducting elections, and the canvass of the returns thereof, shall, insofar as applicable, and except as otherwise specifically provided herein, govern the election to be held pursuant to this Ordinance.

Section 10: The Common Council will act upon the propositions approved at said election, and by subsequent ordinance implement the sale of the bonds and proceed as soon as practicable with the improvements authorized by the voters at said election.

Section 11: This Ordinance shall be published in the Anchorage Times, a newspaper published at Anchorage, Alaska, for two consecutive weeks.

Section 12: This Ordinance shall take effect immediately upon its passage and approval, an emergency having been duly declared.

Passed and approved this 5th day of March, 1947.

[Seal]        /s/ FRANCIS C. BOWDEN,  
Mayor.

Attest:

      /s/ T. E. DOWNES,  
City Clerk.

Certificate

I, B. W. Boeke, Clerk of the City of Anchorage, Territory of Alaska, do hereby certify that the foregoing ordinance is a true, full and correct copy of Ordinance No. 193, duly adopted by the City Coun-



cil of said City on the 5th day of March, 1947, and that the same has been entered in the minutes of the meeting of said Council for said date.

[Seal]

B. W. BOEKE,

City Clerk.

City of Anchorage, Alaska

ORDINANCE No. 1005

An Ordinance of the City of Anchorage, Alaska, confirming the result of a Special Election held in the City on March 27, 1947, authorizing the issuance of General Obligation Bonds in the sum of \$225,000 for the construction of two trunk outfall sewer lines, providing the date, form, terms and maturities of said bonds and for unlimited annual tax levies to pay the principal and interest thereof, and confirming their sale.

Whereas, at a special election held in the City of Anchorage, Territory of Alaska, on March 27, 1947, pursuant to Ordinance No. 193 of the city, the qualified electors thereof authorized the issuance of general obligation bonds in the sum of \$225,000 for the purpose of providing funds to construct a trunk outfall sewer line to serve the Third and South Additions to the original town site of the city, the terminus of said line to be near the mouth of Chester Creek, and a trunk outfall sewer line along First Avenue, the terminus of said line to be on Knik Arm adjacent to the city; and

Whereas, it is deemed necessary and to the best in-

terest of the city and its inhabitants that said bonds be now issued and sold, to provide the funds necessary for said purposes;

Now, Therefore, Be It Ordained by the Common Council of the City of Anchorage, Territory of Alaska, as follows:

Section 1. That the adoption by the qualified electors of the city at a special election held therein on March 27, 1947, of a proposition providing for the issuance of general obligation bonds of the city in the total principal sum of \$225,000 for the purpose of providing funds to construct a trunk outfall sewer line to serve the Third and South Additions to the original town site of the city, the terminus of said line to be near the mouth of Chester Creek, and a trunk outfall sewer line along First Avenue, the terminus of said line to be on Knik Arm adjacent to the city, be and the same is hereby in all respects ratified and confirmed.

Section 2. The officials of the city are hereby authorized and directed to proceed with the construction and installation of said two trunk outfall sewer lines, and are authorized and directed to cause to be issued and sold at this time the \$225,000 of general obligation bonds authorized by the qualified electors of the city to provide funds for said purposes at a special election held on March 27, 1947.

\* \* \* \* \*

### Certificate

I, B. W. Boeke, Clerk of the City of Anchorage, Territory of Alaska, do hereby certify that the fore-

going ordinance is a true and correct copy of an ordinance duly adopted by the Common Council of said city and approved by its Mayor on the 20 day of April, 1949, and that the same has been entered in the minutes of the meeting of said Council for said date.

B. W. BOEKE,  
City Clerk.

City of Anchorage, Alaska

ORDINANCE No. 1007

An Ordinance of the City of Anchorage, Alaska, confirming the result of a Special Election held in the city on March 27, 1947, authorizing the issuance of General Obligation Bonds in the sum of not to exceed \$225,000 to expand existing sewer facilities in the city; providing the date, form, terms and maturities of said bonds and for unlimited annual tax levies to pay the principal and interest thereof; and confirming their sale.

Whereas, at a special election held in the City of Anchorage, Territory of Alaska, on March 27, 1947, pursuant to Ordinance No. 193 of the city, the qualified electors thereof authorized the issuance of general obligation bonds in the sum of not to exceed \$225,000 for the purpose of providing funds to expand the present sewage system located in the city; and

Whereas, it is deemed necessary and to the best interest of the city and its inhabitants that all of

said bonds so authorized be now issued and sold to provide the funds necessary for said purposes;

Now, Therefore, Be It Ordained by the Common Council of the City of Anchorage, Territory of Alaska, as follows:

Section 1. That the adoption by the qualified electors of the city at a special election held therein on March 27, 1947 of a proposition providing for the issuance of general obligation bonds of the city in the total principal sum of not to exceed \$225,000 for the purpose of providing funds to expand the present sewage system located in the city, be and the same is hereby in all respects ratified and confirmed.

Section 2. The officials of the city are hereby authorized and directed to proceed with the construction and installation of the necessary additions, improvements and extensions to the present sewage system of the city, and are authorized and directed to cause to be issued and sold at this time the \$225,000 of general obligation bonds authorized by the qualified electors of the city to provide funds for said purposes at a special election held on March 27, 1947.

\* \* \* \* \*

Section 5. The city hereby agrees that as soon as practicable after a legal petition for the construction and installation of the necessary additions, improvements and extensions to the present sewage system of the city has been filed and such work authorized, it will levy assessments against the property specially benefited by such improvements in a total amount not to exceed two-thirds of the cost thereof, payable in not more than five annual in-

stallments, and thereafter collect such installments and deposit the same in the Bond Redemption Fund hereinafter created, for the sole purpose of paying the principal of and interest on the bonds authorized herein.

If said petition is not received and the Common Council of the city creates a sewer improvement district and levies and assesses part or all of the cost of such improvements against the property within such district specially benefited by such improvements, such assessments shall be made payable in not more than five annual installments and, when collected, shall be deposited in said Bond Redemption Fund and shall be used solely for the purpose of paying the principal of and interest on the bonds authorized herein.

\* \* \* \* \*

Section 9. An emergency is hereby declared to exist and the rules governing the introduction, reading, passage and approval of ordinances are suspended and this ordinance shall take effect immediately upon its passage and approval.

Passed by the Common Council of the City of Anchorage, Alaska, and approved by the Mayor thereof on this 20th day of April, 1949.

CITY OF ANCHORAGE,  
TERRITORY OF ALASKA,  
By Z. J. LOUSSAC,  
Mayor.

Attest:

B. W. BOEKE,  
City Clerk.



Certificate

I, B. W. Boeke, Clerk of the City of Anchorage, Territory of Alaska, do hereby certify that the foregoing ordinance is a true and correct copy of an ordinance duly adopted by the Common Council of said city and approved by its Mayor on the 20th day of April, 1949, and that the same has been entered in the minutes of the meeting of said Council for said date.

B. W. BOEKE,  
City Clerk.

City of Anchorage, Alaska

RESOLUTION No. 545

Sewer Assessments in Four Districts

Be It Resolved by the City of Anchorage:

1. That the following described sewer districts were created by the City of Anchorage:

Sewer Improvement District No. 1

Beginning at the intersection of 12th Avenue and "U" Street, where the corporate limits of the City meets the boundary of the Alaska Railroad Terminal Reserve; thence south along "U" Street to a point 187.50 feet from the intersection of "U" Street and 13th Avenue; thence east parallel to Scenic Way to the northeast corner of Block 47 of the South Addition; thence south along "S" Street a distance of 375 feet; thence southeast to a point midway on the South border of Block 46 of the South Addition,

which point is on the south corporate limit; thence east along the corporate limits of the City or 16th Avenue to where it intersects with "C" Street; thence north along "C" Street to 12th Avenue; thence west 500 feet along 12th Avenue; thence north at right angles to 11th Avenue; thence west along 11th Avenue to "F" Street; thence south along "F" Street to 12th Avenue; thence west along 12th Avenue to "G" Street; thence north along "G" Street to 11th Avenue; thence west along 11th Avenue to "H" Street; thence south on "H" Street to 13th Avenue; thence west 750 feet along 13th Avenue; thence north at right angles to 12th Avenue; thence west along 12th Avenue to "L" Street; thence north 150 feet along "L" Street; thence west 300 feet at right angles through the alley to "M" Street; thence north on "M" Street to 11th Avenue; thence west on 11th Avenue to "N" Street; thence south on "N" Street 150 feet; thence west at right angles through the alley to the extension of "R" Street; thence north at right angles 150 feet to 11th Avenue; thence west along 11th Avenue to the east border of the Alaska Railroad Terminal Reserve; thence southwest along the east boundary of the Alaska Railroad Terminal Reserve to the point of beginning.

\* \* \* \* \*

2. That the owners of more than one-half in value of the property to be specially benefited by the installation of sewers in the above-described sewer districts have heretofor, prior to the beginning of construction on said projects, requested in writing that the City assess two-thirds of the cost thereof, namely,

of the cost of construction of necessary sewer facilities, including trunk and lateral sewers, to serve their properties which were described in the petitions, against their real property so specially benefited; that the following tabulation shows the areas where such consents have been obtained and show as to each area the total assessed valuation of property specially benefited, the valuation represented by property owners' signatures on petitions and the percentage of total valuation represented on signed petitions:

Sewer Improvement District No. 1: Total assessed valuation, \$1,608,500.00; signed up valuation, \$923,750.00; per cent of total valuation signed up, 57.42%.

3. That the property to be specially benefited by the sewer improvements within the above-described areas consists of each lot in said above-described areas in proportion to the area thereof; it being hereby found that each lot of real property within the above-described areas is benefited in proportion to its area.

4. That the total value of the property specially benefited by the proposed improvements is as indicated in Par. 2 above; that the total value of the property specially benefited by these improvements owned by persons whose signatures appear on written petitions on file with the City Clerk requesting the particular improvement is as indicated in Par. 2 above; that the percentage of value of the property to be specially benefited by each improvement in each area is as indicated above in Par. 2, and, as indicated, is represented on petitions requesting said improve-

ments; that the requisite petitions signed by all the owners of at least one-half in value of the property specially benefited by the above improvement are on file with the city.

5. That, heretofore, prior to the commencement of construction of the requested improvements above described, and now, the Council finds that the requested improvements are necessary and should be made; that it is necessary that the City construct sewer systems in said above-described areas.

6. The Council hereby finds the above facts stated in paragraphs 1 to 5 inclusive to be the true facts in this matter and hereby expressly makes this finding retroactive to the date of submission of petitions and date of commencement of construction and award of sewer contract to Stateside Construction Company and hereby ratifies and confirms all its prior actions in this matter, expressly its prior resolve that the above-described improvements were necessary and that they should be made and that the petitions were legally sufficient and that requests have been signed by the owners of at least one-half in value of the property to be specially benefited.

7. The Council hereby decides that two-thirds of the cost of the sewer improvements herein mentioned shall be assessed against the real property so specially benefited in proportion to the benefit received by each lot in accordance with the area of each lot in the above-described districts and pursuant to subsection 104.2, Chap. 3, Anchorage General Code; this finding shall ratify and confirm prior findings in this matter made by the Council at the time of re-



ceiving the petitions or requests for the project and shall be retroactive to that time.

8. The City Manager shall keep correct account of all of the expenses of the improvement herein authorized in accordance with sub-section 102.4, Chap. 3, Anchorage General Code.

Publication of this resolution shall be made by posting a copy hereof on the City Hall Bulletin Board, for a period of ten (10) days following passage.

An emergency having been declared and the rules governing the introduction and passage of resolutions having been suspended this resolution is passed and approved by the council of the City of Anchorage this 1st day of March, 1950.

EDWARD G. BARBER,  
Acting Mayor, City of Anchorage.

Attest:

B. W. BOEKE,  
City Clerk, City of Anchorage.

City of Anchorage, Alaska

## RESOLUTION No. 570

### Sewer Assessments in Four Districts

Be It Resolved by the Council of the City of Anchorage, Alaska:

1. Resolution No. 545, passed and approved the 1st day of March, 1950, directed the City Manager to proceed with the installation of sanitary sewer facilities in sewer improvement districts Nos. 1, 2, 3



and 4 created by said resolution; said resolution found that the property to be specially benefited by said improvements consisted of each lot in said described sewer improvement districts in proportion to the area thereof; said resolution further directed that two-thirds ( $2/3$ ) of the cost of the improvement be assessed against the property specially benefited in proportion to the benefit received by each lot in accordance with the area of each lot in the aforementioned sewer improvement districts and pursuant to Subsection 104.2, Chapter 3, Anchorage General Code, and that the City Manager keep a record of all the expenses of the improvements.

2. It is hereby found that the cost of said improvement is the sum of \$424,792.29. Attached to this resolution and incorporated herein as if expressly set out in the body hereof and attached hereto as "Exhibit A" is the correct account of said improvements, entitled "Assessment for Sewers Constructed During 1949 and 1950".

3. It is hereby determined that the benefit received by each of the lots contained in the aforementioned sewer improvement districts is as shown in Exhibit A and therefore the amounts so shown should be assessed.

4. The Municipal Assessor is hereby directed to make the above referred to assessment against each of the above referred to lots and enter the same upon an assessment roll by him prepared in connection with this project; which assessment roll shall be prepared in form suitable for the signature of the Mayor and his certification that it is the assessment roll as

finally settled by the City Council; said assessment roll shall contain a brief description or designation of each tract of property, the name of owner or reputed owner thereof, and the amount of the assessment.

5. Objections to said assessments, if any, shall be heard at a special council meeting on September 27, 1950, at eight o'clock p.m. in the Council Chambers, City Hall, Anchorage, Alaska.

6. The City Clerk is hereby directed to send a written notice by mail to each owner of the properties against which such assessment is made, which notice shall state the amount of the assessment against such particular tract and the time fixed by the Council for hearing objections; said notice shall be mailed at least fifteen (15) days before September 27, 1950.

Publication of this Resolution shall be made by posting a copy on the City Hall Bulletin Board for a period of ten (10) days following passage.

First reading—September 6, 1950.

Second reading—September . . , 1950.

Passed and approved this . . . . day of September, 1950.

.....  
Z. J. Loussac,  
Mayor, City of Anchorage.

Attest:

.....  
B. W. Boeke, City Clerk.

## City of Anchorage, Alaska

## RESOLUTION No. 577

Sewer Assessments in Four Districts,  
Levy of Assessment

Be It Resolved by the City of Anchorage:

1. That the sewer improvement authorized by Resolutions Nos. 545 and 570 of the City in sewer improvement districts Nos. 1, 2, 3 and 4 and benefiting each lot or tract in said improvement districts is deemed complete and is hereby levied against said lots or tracts in the manner and amounts indicated on pages 1 through 19 of the "Special Sewer Assessment Construction in 1949-1950 of the Tax Rolls and Assessment Rolls of the City of Anchorage, on file in the office of the City Clerk, City of Anchorage in the City Hall, first floor.

2. That the above special assessment has been entered in the special assessment rolls of the City and pursuant to the provisions of Resolution No. 570, passed and approved 13 September 1950, a notice has been sent to each of the property owners specially benefited by the improvement, as indicated on the said tax and special assessment rolls, notifying them of public hearing, which was held in accordance with law; that at the protest hearing as continued all errors in the assessment rolls were corrected and the amounts indicated on said tax and special assessment rolls referred to in paragraph 1 above are the amount finally determined upon as being due from the property owners benefited; that the assessment

roll has been finally settled by the Council and certified by the Mayor.

3. The assessment levied herein shall be paid as herein described on or before 15 January, 1951 and shall become delinquent at midnight, 15 January, 1951. The assessment may be paid in five equal annual installments, said installments to be payable on or before 15 January, 1951, 15 January, 1952, 15 January, 1953, 15 January, 1954 and 15 January, 1955. If any such installment is not paid when due, the entire unpaid portion of said assessment shall immediately become due. No interest shall be charged on unpaid balances of said special assessments if promptly paid as aforescribed. If not fully paid before delinquency, the unpaid assessments shall bear interest at the rate of eight per cent per annum; a penalty of eight per cent shall be added to said unpaid balance of the assessments, not including interest.

4. Within ten days from the passage of this resolution, the City Clerk shall mail with postage prepaid a notice to the owner of each property assessed, which notice shall designate the property, the amount of the assessment, the time of delinquency and the amount of penalty in case of delinquency and inform said person of the policy of the Council with relation to protests over assessments hereby levied.

5. Within five days after mailing the notices required by Paragraph 3 above, the City Clerk shall file his affidavit setting forth said mailing.

Publication of this resolution shall be made by posting a copy thereof on the City Hall Bulletin Board for a period of ten days following the passage hereof.

First reading: October 11, 1950.

Passed and approved this .... day of October, 1950.

.....

Z. L. Loussac, Mayor.

Attest:

.....

B. W. Boeke, City Clerk.

[Endorsed]: Filed Jan. 4, 1951.

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[Title of District Court and Cause.]

## AFFIDAVIT OF BETTY KERBY

United States of America,  
Territory of Alaska—ss.

Betty Kerby, first being duly sworn, under oath, deposes and says:

1. That I am Acting City Clerk of the City of Anchorage.

2. That on January 8, 1951 I checked the copies of Ordinances 193, 1005 and 1007 and Resolutions 545, 570 and 577, which are on file in Cause No. A-6622 and which are attached to defendant's answer in said cause; that I made this check in the office of the Clerk of the District Court.

3. That I compared the copies so attached to the Answer with the originals of said Ordinances and



Resolutions which are on file in my office or the office of the City Clerk, Anchorage, Alaska;

4. That Ordinances 193, 1005, 1007 and Resolutions 545, 570 and 577 so attached to the Answer are true, full and correct copies of the originals of said Ordinances and resolutions with the following exceptions:

(a) Emergency clause or last four lines of Resolution 545 should be stricken.

(b) As to Resolution No. 570—Date in paragraphs 5-6 thereof should be changed to September 29, 1950 instead of September 27, 1950 and “OK Z.J.L.” should be inserted at end of last line of paragraph 6; further, “Second reading—Sept. . . 1950” should read “Second reading—Sept. 13, 1950” and the date “13” should be inserted in the last line thereof.

(c) As to Resolution No. 577, the date “18” should be inserted in the last line thereof.

5. That all of said Ordinances were attested and signed as indicated by the typing beneath signature lines.

6. That I am prepared to make these corrections on the Court’s copies of these ordinances attached to defendants’ Answer.

7. That attached hereto and expressly incorporated herein is a true, full and correct copy of the map that was attached to the “Petition for Sewers” and “Explanation for Sewer Assessments” referred to and made a part of my affidavit of 4 January 1951; that this is a true, full and correct copy of the map that is a part of the petition for sewers in Improvement District No. 1 which petition is on file in my

office; that I make the statement and attach this copy in order to give the Court a full knowledge of the exact form of the Petition Sewers.

Dated at Anchorage, Alaska, this 9th day of January, 1951..

/s/ BETTY KERBY,

Subscribed and sworn to before me this 9th day of January, 1951.

[Seal]        /s/ JOHN S. HELLENTHAL,  
Notary Public in and for Alaska.

My Commission expires 10-8-53.

[Endorsed]: Filed Jan. 9, 1951.

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[Title of District Court and Cause.]

### AFFIDAVIT OF ROBERT E. SHARP

United States of America,  
Territory of Alaska—ss.

Robert E. Sharp, first being duly sworn, deposes and says:

1. That I am City Manager of the City of Anchorage and was City Comptroller during the summer months of 1949.

2. That prior to July 1, 1949 the total assessed valuations represented by signatures on petitions for sewer improvements in Sewer Improvement Districts 1, 2, 3 and 4 were made under my supervision; that the valuations are the same as the valuations for said districts contained in Resolution No.

545 with minor exceptions not exceeding about \$14,-000.00.

3. That the petitions with total assessed valuations represented by signatures were presented to the Council prior to June 30, 1949 and were acted upon by the Council and the Council had knowledge of them at the time of the execution of the Stateside Construction Company contract on July 1, 1949.

Dated at Anchorage, Alaska, on 9 January 1951.

/s/ ROBERT E. SHARP.

Subscribed and sworn to before me this 9th day of January, 1951.

[Seal]        /s/ JOHN S. HELLENTHAL,  
Notary Public for Alaska.

My Commission expires 10-8-53.

[Endorsed]: Filed Jan. 9, 1951.

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[Title of District Court and Cause.]

## AFFIDAVIT OF PHYLLIS BURKE

United States of America,  
Territory of Alaska—ss.

I, Phyllis Burke, first being duly sworn under oath depose and say:

1. That during the months of June and July, 1949 and subsequent thereto, I was employed in the Tax Assessor's Office of the City of Anchorage.

2. That prior to July 1, 1949 I checked the peti-

tions for sewer assessments in Sewer Improvement Districts 1, 2, 3 and 4 and assisted in the insertion of valuations thereon; that the total assessed values represented by signatures on petitions were prepared prior to July 1, 1949 and submitted to the City Engineer; that the total showed that a majority of property owners in value as represented by signatures on petitions had petitioned for improvements in the four districts.

Dated at Anchorage, Alaska, on 9 January 1951.

/s/ PHYLLIS BURKE

Subscribed and sworn to before me this 9th day of January, 1951.

[Seal]           /s/ JOHN S. HELLENTHAL,  
Notary Public for Alaska.

My Commission expires 10-8-53.

[Endorsed]: Filed Jan. 9, 1951.

---

[Title of District Court and Cause.]

### AFFIDAVIT OF FRANK BAYER

United States of America,  
Territory of Alaska—ss.

Frank Bayer, first being duly sworn, under oath, deposes and says:

1. That during the month of June 1949 I personally circulated petitions for sewers in Sewer Improvement Districts 1, 2 and 3.

2. That these petitions were circulated prior to July 1, 1949 and the total valuations represented by signed petitions were calculated prior to said date; that the petitions were presented to the City Engineer for submission to the Council on or about the last week of June, 1949; that at the time of submission more than the required percentages had been obtained in the three districts I was concerned with, namely, 1, 2 and 3. In other words, in all three districts, on July 1, 1949, more than the required number of signatures had been obtained, that is, more than a majority of the property owners in value as represented by signatures on petition.

Dated at Anchorage, Alaska, on 9 January 1951.

/s/ FRANK BAYER,

Subscribed and sworn to before me this 9th day of January, 1951.

[Seal] /s/ JOHN S. HELLENTHAL,

Notary Public in and for Alaska

My Commission expires 10-8-53.

[Endorsed]: Filed Jan. 9, 1951.

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[Title of District Court and Cause.]

## AFFIDAVIT OF CHARLES TRYCK

United States of America,  
Territory of Alaska—ss.

Charles Tryck, first being duly sworn under oath deposes and says:

1. That I was City Engineer of the City of Anchorage during the summer of 1949.



2. That prior to the execution of the contract between the City of Anchorage and Stateside Construction Company for the construction of sewers in what was termed Sewer Improvement Districts 1, 2, 3 and 4, the petitions for sewer improvements were filed with the City and the valuations represented by signatures thereon were computed, and the totals brought before the City Council prior to the execution of said contract; that more than a majority of the property owners in value were represented by signatures on petitions in each of the four areas deemed improvement districts; that people might have signed petitions after the signing of the sewer contract but, if so, they represented an insignificant portion of the total value represented by signatures on petitions and could not in any way affect the total result, as there was clearly a majority on June 30, 1949 and before the contract was executed.

3. That some time between July 1, 1949 and July 25, 1949 the contractor broke ground for the sewer project; that immediately after the execution of the contract, the contractor engaged himself in gathering his equipment.

Dated at Anchorage, Alaska, on 9 January 1951.

/s/ CHARLES N. TRYCK

Subscribed and sworn to before me this 9th day of January, 1951.

[Seal] /s/ JOHN S. HELLENTHAL,

Notary Public in and for Alaska

My Commission expires 10-8-53.

[Endorsed]: Filed Jan. 9, 1951.

[Title of District Court and Cause.]

## AFFIDAVIT OF MURRAY INGERSOLL

United States of America,  
Territory of Alaska—ss.

Murray Ingersoll, first being duly sworn, under oath, deposes and says:

1. That during the summer of 1949 I was employed by the City Engineer's Office of the City of Anchorage, Anchorage, Alaska.

2. That in June of 1949 I circulated a petition for sewers together with accompanying explanation of sewer assessments and map among the property owners of Sewer Improvement District No. 4 as it was called.

3. That prior to the end of June 1949 I had obtained the signatures of more than a majority in value of the property owners in said area on the petition that I circulated. That some time before the end of the month of June, I delivered the petition to the City Engineer's office where it was checked.

Dated at Anchorage, Alaska, the 9th of January, 1951.

/s/ MURRAY INGERSOLL

Subscribed and sworn to before me this 9th day of January, 1951.

[Seal] /s/ JOHN S. HELLENTHAL,  
Notary Public for Alaska.

My Commission expires 10-8-53.

[Endorsed]: Filed Jan. 10, 1951.

[Title of District Court and Cause.]

AFFIDAVIT OF BETTY KERBY RE  
COUNCIL MINUTES, JUNE 29-30, 1949

To: John S. Hellenthal, Esq., Attorney for Defendants:

Please take notice that the attached certified copies of the Minutes of the City Council from June 22, 1949, through July 12, 1949, are submitted in opposition to affidavits of Robert E. Sharp, Charles Tryck, Betty Kerby, Frank Bayer, and Phyllis Burke, served on me on the 10th day of January 1951 in further opposition to Plaintiffs' motion for summary judgment.

Dated 10 January 1951.

/s/ GEORGE M. McLAUGHLIN,  
Attorney for Plaintiff.

Acknowledgment of Service attached.

Copy

Vol. 7, Page 162

Minutes of a Special Meeting of the City Council  
Held on June 22, 1949 at 8:00 p.m.

The meeting was called to order by Mayor Loussac and the following members reported present: Barber, Krause, Rozell, Scavenius, Summers. Absent: Setchfield.

Minutes of the previous meeting were read and approved.

Mr. Wendell Kay, Attorney representing Mr. and

Mrs. John Roberts, requested that the Council reconsider its recent action of denying the subdivision of Lot 6 in Block 38A of the South Addition.

It was moved by Summers and seconded by Rozell to reconsider action taken at the meeting of May 18, 1949 denying the subdivision of Lot 6, Block 38A of the South Addition. All voted in the affirmative.

After considerable discussion it was moved by Summers and seconded by Rozell that the request of Mr. and Mrs. John Roberts to subdivide Lot 6 of Block 38A of the South Addition be granted and that they furnish necessary easements to the City. Voted for the motion: Barber, Krause, Rozell, Summers. Voted against the motion: Scavenius. Motion declared carried.

Mr. M. Lurie and Mr. G. Fields, representing the Pacific Alaska Development Corp., who are contemplating erecting a 682 Apartment unit in the Government Hill and Military Reserve Areas, spoke briefly and requested a written statement to the effect that the proposed structure would meet the Zoning requirements. It was also requested that upon completion of installation of sewers, streets and sidewalks that the City pay its customary share of 33 1/3 per cent of cost of installation, over a five year period, at which time the whole installation would become the property of the City.

The matter was referred to the City Manager and City Attorney to draft the necessary contract and submit at a meeting of the Council the following day.

A letter was read from the Clerk of the U. S. District Court advising that an application had been filed by Axel G. Olson, George A. Kail and R. E. McRoberts d/b/a Scandinavian Club Bar, located at 435 "C" Street, for transfer of License No. 2033 from Axel G. Olson, George A. Kail and Erik Grime-land.

It was moved by Rozell and seconded by Summers that the transfer of Beverage Dispensary Liquor License No. 2033 be approved. All voted in the affirmative.

Mr. Floyd Smith of the Flora Engineering Co. requested that the contract of Kincaid and King be amended to allow for by-monthly payments to the contractor for work performed, instead of one payment each month. The City Manager was authorized to prepare the necessary amendment and submit it at a later meeting.

Mr. Floyd Smith of the Flora Engineering Co., submitted bids for a 200 KVA sub-station and recommended that the bid of the General Electric Co. in the amount of \$29,560.00 be accepted.

It was moved by Scavenius and seconded by Summers that the bid of General Electric Co. be accepted. All voted in the affirmative.

The City Manager read a letter from the Pacific Airmotive Corp. requesting revision of a regulation requiring all buildings at Merrill Field to be moved when no longer needed in connection with flying, to allow leasing or selling its property when the new airport is completed. The matter was tabled until a later meeting.



In a letter, the Anchorage Public Utilities Board requested that an ordinance be passed making it unlawful to fly kites or climb poles near the 34,000 volt transmission lines now in use within the City. The City Attorney was directed to draft an ordinance prohibiting access to poles and sub-stations.

The City Manager read a letter from Mr. Gill requesting payment for trees placed along I Street in 1945. The letter was ordered placed on file.

The following vouchers were presented for payment:

Voucher No.	Vendor	Amount
5-117	City Fuel Company.....	\$ 46.68
5-118	Anchorage Daily News.....	50.00
5-119	Weston Electrical Instrument Corp.....	21.50
6-8	Auditor, Alaska Communication System....	201.30
6-9	Alaskan Stationers & Publishing Co.....	57.40
6-10	Northern Supply .....	413.69
6-11	City of Anchorage, Payroll Account.....	41105.68
6-12	Federal Credit Union .....	639.50
6-13	Snyder Office Supply .....	250.30
6-14	Hohn Plumbing Co. ....	21.50
6-15	H. R. Huntting Company.....	433.70
6-16	Walt's Transfer .....	347.88
6-17	Miller and Dalton .....	43.50
6-18	General Electric Supply Co.....	575.25
6-19	Ken C. Johnson Insurance Agency.....	20.00
6-20	Sunset Motors .....	5.00
6-21	Burroughs Adding Machine Co.....	2790.10
6-22	Bank of Alaska .....	3295.75
6-23	Flora Engineering Company .....	4000.00
6-24	Manley and Mayer .....	700.00
Check Request No.		
100	Atkins Welding Shop .....	153.38
101	Miller and Dalton .....	627.40
102	Northern Excavating Company, Inc.....	52.50
103	City of Anchorage .....	579.87

It was moved by Rozell and seconded by Scavenius

that the vouchers be approved for payment. All voted in the affirmative.

A proposed Ordinance, Chapter 11 of the Municipal Code, was read for the first time.

Meeting adjourned 1:10 A.M.

/s/ B. W. BOEKE,  
City Clerk

Minutes of a Special Meeting of the City Council  
Held on June 23, 1949, at 5:15 P.M.

The meeting was called to order by Mayor Loussac and the following Councilmen reported present: Barber, Krause, Rozell, Scavenius, Setchfield. Absent: Summers.

The City Manager read a letter from the Zoning Board advising that it had approved the request of the Pacific Alaska Development Corporation to rezone land described in Resolution No. 530 from Residential No. 1 to Residential No. 2.

Resolution No. 531 in regard to zoning of a portion of Government Hill and Military Reserve Areas from Residential No. 1 to Residential No. 2 area, was read.

[Copy]

City of Anchorage, Alaska

RESOLUTION No. 531

Whereas, the Pacific Alaska Development Corporation has requested the City of Anchorage for permission to erect apartment houses in the Alaska Railroad Terminal Reserve and in a portion of the

southwest portion of the Fort Richardson Military Reserve, both of which tracts of land are within the corporate limits of the City of Anchorage; and

Whereas, the areas in which the proposed apartment houses are to be constructed are within Residential District No. 1 of the Zoning Laws of the City, in which Zoning District apartment house units are prohibited; and

Whereas, the Zoning Commission of the City has recommended that the following amendment to the City Zoning Ordinance be adopted:

Be It Resolved by the City of Anchorage:—

That the Zoning Law or Article 1, Chapter 10, Anchorage General Code, or Ordinance No. 275, be amended to include in Residential District No. 2, the following described properties, situated on Government Hill, all within the corporate limits, and part within the Military Reservation of Fort Richardson and part within the Alaska Railroad Terminal Reserve, as indicated in the following description:—

Ten tracts of land lying within the East Government Hill Subdivision of the Terminal Reserve of the Alaska Railroad at Anchorage, Alaska, as shown on the official maps of the Alaska Railroad, and described as follows, to-wit:

Lots 1 to 10, inclusive, Block 11

Lots 1 to 5, inclusive, Block 16

Lots 6 to 10, inclusive, Block 16

Lots 1 to 5, inclusive, Block 17

Lots 6 to 10, inclusive, Block 17

Lots 1 to 5, inclusive, Block 18

Lots 6 to 10, inclusive, Block 18

Lots 1 to 5, inclusive, Block 19

Lots 6 to 10, inclusive, Block 19

A tract of land adjacent to the southerly side of Hollywood Drive approximately opposite Blocks 16 and 17, and described as follows:

Beginning at a point on the southerly side of Hollywood Drive which lies S. 74 22' E., 150 feet from the northwesterly corner of Block 11. From this point the  $\frac{1}{4}$  section corner between Sections 7 and 8, Township 13 North, Range 3 West, Seward Meridian, marked by an iron pipe, bears the following metes and bounds: N. 15 38' E., 395.00 feet thence N. 74 22' W., 1258.46 feet; thence N. 61 39' 30" W., 311.86 feet; thence due East 786.09 feet to the  $\frac{1}{4}$  section corner. From the point of beginning, thence S. 74 22' E., 544.32 Feet along the southerly side of Hollywood Drive; thence S. 15 38' W., 140.00 feet; thence N. 74 22' W., 544.32 feet; thence N. 15 38' E., 140.00 feet to the point of beginning.

A tract of ground in Fort Richardson Military Reservation more particularly described as follows:

Point of beginning is center of Section 8 Township 13 North of Range 3 West Seward Meridian; thence due south 930.00 feet; thence North 74 W. a distance of 1600.00 feet; thence North 25 E. a distance of 540.00 feet; thence due East 1320.00 feet to the point of beginning.

This resolution shall be effective on the condition that notice of public hearing in this matter be given in accordance with the ordinances of the City of An-

chorage and Title 16, Chapter 1, Section 35, Paragraph 24th, A.C.L.A. 1949, calling said hearing fifteen (15) days following the passage hereof, and that after said public hearing the City Council readopts this resolution.

Publication of this resolution shall be made by posting a copy thereof on the City Hall bulletin board for a period of ten days following the passage hereof. An emergency is hereby declared and the rules governing the introduction, passage, and approval of resolutions are hereby suspended and this resolution shall be effective on its passage.

Dated this 23 day of June, 1949.

/s/ Z. J. LOUSSAC,  
Mayor.

Attest:

/s/ B. W. BOEKE,  
City Clerk."

[Copy]

It was moved by Rozell and seconded by Scavenius that the rules be suspended to consider the resolution. All voted in the affirmative.

It was moved by Scavenius and seconded by Rozell that Resolution No. 531 be adopted. All voted in the affirmative.

Resolution No. 530, an agreement with the Pacific Alaska Development Co. to arrange for the installation of sewer, water, streets and sidewalks, was read.



[Copy]

## City of Anchorage, Alaska

## RESOLUTION No. 530

Agreement With Pacific Alaska Development  
Corporation

The Pacific Alaska Development Corporation, a foreign corporation, hereinafter called the "corporation", having requested the City Council that arrangements be made for the installation of a sewer system, water system and streets and sidewalks in connection with their "Panoramic Vista and Panoramic View Apartment Project", and having indicated that said utility installations will be made by their corporation with the understanding that the City pay one-third of the cost of the installation of said utilities over a five-year period, and both parties having agreed that a resolution should be prepared by the City Council in the nature of a working agreement in connection with said matters;

Now, Therefore, be it resolved by the City of Anchorage, Alaska;

1. The corporation has leased from the United States Department of the Interior, the Alaska Railroad, for a term of seventy-five (75) years beginning May 16, 1949, the following described properties located within the corporate limits of the City of Anchorage, Alaska, within the Terminal Reserve of the Alaska Railroad, within the East Government Hill Subdivision thereof, which properties are within the jurisdiction of the City of Anchorage, Alaska, and described as follows:

Ten tracts of land lying within the East Government Hill Subdivision of the Terminal Reserve of the Alaska Railroad at Anchorage, Alaska, as shown on the official maps of the Alaska Railroad, and described as follows, to wit:

Lots 1 to 10, inclusive, Block 11

Lots 1 to 5, inclusive, Block 16

Lots 6 to 10, inclusive, Block 16

Lots 1 to 5, inclusive, Block 17

Lots 6 to 10, inclusive, Block 17

Lots 1 to 5, inclusive, Block 18

Lots 6 to 10, inclusive, Block 18

Lots 1 to 5, inclusive, Block 19

Lots 6 to 10, inclusive, Block 19

A tract of land adjacent to the southerly side of the Hollywood Drive approximately opposite Blocks 16 and 17, and described as follows:

Beginning at a point on the southerly side of Hollywood Drive which lies S. 74 22' E., 150 feet from the northwesterly corner of Block 11. From this point the  $\frac{1}{4}$  section corner between Sections 7 and 8, Township 13 North, Range 3 West, Seward Meridian, marked by an iron pipe, bears the following metes and bounds: N. 15 38 E., 359.00 feet thence N. 74 22' W., 1258.46 feet; thence N. 61 39' 30" W., 311.86 feet; thence due East 786.09 feet to the  $\frac{1}{4}$  section corner. From the point of beginning, thence S. 74 22' E., 544.32 feet along the southerly side of Hollywood Drive; thence S. 15 38' W., 140.00 feet; thence N. 74 22' W., 544.32 feet; thence N. 15 38' E., 140.00 feet to the point of beginning.

2. The corporation has obtained a lease from the Secretary of the Army for the construction of an apartment house project of the following described land located within the corporate limits of the City of Anchorage and situated in the Fort Richardson Military Reservation:

A tract of ground in Fort Richardson Military Reservation more particularly described as follows:

Point of beginning is center of Section 8 Township 13 North of Range 3 West Seward Meridian; thence due south 930.00 feet thence North 74 W. a distance of 1600.00 feet; thence North 25 E. a distance of 540.00 feet; thence due East 1320.00 feet to point of beginning.

3. The corporation contemplates the construction of 264 units on the lands described in Paragraph 1 above and the construction of 418 units on the land described in Paragraph 2 above.

4. The fee title to the lands described in Paragraph 1 above lies with the United States Government and the question of title to the lands described in Paragraph 2 is undetermined, but in all events as between the parties hereto, their successors and assigns, the properties described in Paragraphs 1 and 2 above are to be considered as if within the corporate limits of the City of Anchorage in computing taxes, where collectible, or payments in lieu thereof, if not assessable, and fully entitled to the benefits afforded all property within the corporate limits.

5. The corporation agrees to construct and install in the above-described tracts of lands, utilities, the size of said utility installations to be commensurate

with the number of units proposed to be constructed. The corporation agrees to bear the initial cost of said installation and to keep accurate records of the cost thereof, which records shall be available to the City at all times for inspection at reasonable hours. The term "utility" shall be deemed to include sewers (storm and sanitary, trunk and lateral), but not service connections and extensions; water mains (laterals and trunks) but not service connections and extensions; and streets, sidewalks and storm drains.

6. The City agrees following and beginning with the completion of construction of fifty per cent (50%) of the buildings served by the contemplated utilities and the completion of said utilities to pay to the corporation one-third ( $\frac{1}{3}$ ) of the actual cost of said utility installations in five (5) equal annual payments, without interest. The total city payment shall be one-third ( $\frac{1}{3}$ ) of the actual cost as herein defined, but in no event shall said total payment exceed the sum of \$100,000.00. It is agreed that it is the intention of the parties that said figure is based upon one-third ( $\frac{1}{3}$ ) of the total estimated cost of construction and installation of utilities sufficient to serve the entire project and not just a portion thereof. "Completion of buildings" shall be understood to mean that stage of construction when occupancy of the buildings is reasonably possible. "Actual cost" shall include cost of materials and labor and interest payments on money borrowed for said purpose from government agencies.

7. Title to all utilities shall pass to the City upon

installation thereof and shall remain in the City at all future times.

8. The City agrees to furnish to the corporation and to the properties described in Paragraph 1 and 2 above, fire protection, police protection, health and sanitary protection and all benefits afforded by the City to its citizens, to the extent that such benefits are afforded to other sections of the City and on a non-discriminatory basis.

9. The corporation agrees to pay all taxes and assessments that may be from time to time assessed and levied against the improvements placed upon the properties described above and upon the properties themselves to the extent that they are taxable and assessable at rates imposed throughout the City. This proviso contemplates such taxes and assessments as the corporation shall be legally bound to pay and further contemplates a full payment in lieu of taxes (equal to what could be assessed on leasehold improvements if within the City except for land values of leaseholds) based upon the assumption that all the above-described properties are within the corporate limits, in case it develops that they are not. The City agrees to be responsible for the maintenance and repair of the utilities herein contemplated at all future times. If the City Council determines to assess for the cost of repair of utilities similar to the utilities herein described throughout the City, the corporation agrees to pay said assessment.

10. The corporation agrees to submit all plans and specifications and estimates of cost of construction for utilities herein contemplated to the City of



Anchorage for its approval prior to installation and the corporation agrees to install said utilities in a manner in conformity to the ordinances, rules and regulations and standards of the City. It is estimated that the cost of utilities herein contemplated is \$292,000.00. The City must approve all said plans and specifications prior to installation of the proposed utilities. The corporation agrees to abide by all requirements of the Territorial Department of Health with regard to said utility installation and construction.

11. In installing the utilities, the corporation agrees to secure competitive bids for their installation, in whole or in part, and not to depart from this system of bidding without the City's consent.

12. The corporation agrees to obtain easements from the Alaska Railroad, or the U. S. Department of the Army, or any other interested person for installation of utilities, for a period equal to the duration of the corporation's lease; said easements to be submitted with plans and specifications to the City for approval.

13. This agreement is in the nature of a working agreement and may be modified by mutual consent from time to time but in cases of disagreement the Alaska Railroad is hereby nominated by both parties as arbitrator.

14. This agreement shall be executed by the City this 23rd day of June, 1949 and executed by the legally authorized officials of the Pacific Alaska Development Corporation within ten (10) days thereafter, and property acknowledged by said officials,

and shall be prepared and executed in quintuplicate. This agreement shall bind the successors and assigns of the parties hereto.

Dated at Anchorage, Alaska, this 23rd day of June 1949.

**CITY OF ANCHORAGE,**

By /s/ Z. J. LOUSSAC, Mayor.

**PACIFIC ALASKA DEVELOPMENT CORPORATION,**

By /s/ HARVEY LUCIER, President.

Attest:

/s/ MELVIN D. LURIE, Secretary.

Publication of this resolution shall be made by posting a copy thereof on the City Hall bulletin board for a period of ten days following the passage hereof.

An emergency is hereby declared and the rules governing the introduction, passage and approval of resolutions are hereby suspended and this resolution shall be effective on its passage by the Council and approval by the Mayor this 23rd day of June, 1949.

/s/ Z. J. LOUSSAC, Mayor.

Attest:

/s/ B. W. BOEKE, City Clerk.

It was moved by Setchfield and seconded by Rozell that the rules be suspended to consider the resolution. All voted in the affirmative.

It was moved by Setchfield and seconded by Scaenius that Resolution No. 530 be adopted. All voted in the affirmative.

Meeting adjourned 6:10 p.m.

/s/ B. W. BOEKE, City Clerk.

Minutes of a Special Meeting of the City Council

Held on June 27, 1949 at 5:15 p.m.

The meeting was called to order by Mayor Loussac and the following members reported present: Barber, Krause, Rozell, Scavenius, Setchfield. Absent: Summers.

Awarding of the bids for the construction of the water gravity system was discussed. No action taken and meeting called for 11 a.m. the following day.

Meeting adjourned 6:10 p.m.

/s/ B. W. BOEKE, City Clerk.

Minutes of the Special Meeting of the City Council

Held June 28, 1949 at 11:00 a.m.

Meeting called to order by Councilman Barber and the following reported present: Barber, Krause, Rozell, Scavenius, and Setchfield. Absent: Mayor Loussac and Councilman Summers.

It was moved by Rozell and seconded by Setchfield that Councilman Barber be appointed acting mayor to preside over the meeting. Voted yes: Barber, Rozell, Scavenius, and Setchfield. Voted no: Krause.

Awarding of the bids for construction of the Gravity Water System was discussed.

It was moved by Setchfield, seconded by Scavenius that all bids received for the construction of the Gravity Water System be rejected and Flora Engineering Company instructed to immediately call for new bids. Voted yes: Barber, Rozell, Scavenius and Setchfield. Voted no: Krause.

Meeting adjourned 11:25 a.m.

/s/ B. W. BOEKE, City Clerk.

Minutes of a Special Meeting of the City Council  
Held on June 29, 1949 at 8:00 p.m.

Mayor Loussac absent, the meeting was called to order by Councilman Barber and the following reported present: Barber, Krause, Rozell, Scavenius, Setchfield, Summers.

It was moved by Setchfield and seconded by Rozell that Councilman Barber be appointed Acting Mayor to preside over meetings during Mayor Loussac's absence. All voted in the affirmative.

Minutes of the previous meetings were read and approved.

A letter was read from the Clerk of the U. S. District Court that an application had been filed by Nathan Pendleton Post No. 9890, Veterans of Foreign Wars, located at 113 East 5th Avenue for a Club Liquor License to expire December 31, 1949. The application was approved by the Police, Fire and Health Departments.

It was moved by Scavenius and seconded by Rozell that the application of the Nathan Pendleton Post No. 9890, Veterans of Foreign Wars, for a Club liquor License be approved. All voted in the affirmative.

Only one bid on the construction of the expansion of the sewer system having been submitted, that of the Stateside Construction Company in the amount of \$488,201.05, which was above the engineer's estimate, Mr. Smith recommended that he be authorized to negotiate further with the contractor.

The City Engineer and Flora Engineering Com-

pany were authorized to further negotiate with the Stateside Construction Company and report at a Council meeting to be held at 7 p.m. the following day.

The City Comptroller submitted the budget report for the period January 1 to May 31, 1949 and was commended by all members of the Council.

The City Manager stated that the clerical and typing duties of the City Magistrate had been taken over by a newly appointed court clerk.

It was moved by Rozell and seconded by Scavenius that the \$50.00 per month allowance for clerical and typing duties paid the City Magistrate be discontinued since the function has been assumed by the Court Clerk. All voted in the affirmative.

The City Engineer submitted a detailed report outlining the estimated assessments to be levied for paving sidewalks, curbs and gutters now under construction.

The City Manager recommended that he be authorized to advertise for bids for the demolishment of the Ark, located just west of the Central Building, which has been condemned by the Building Inspector.

It was moved by Summers and seconded by Setchfield that the City Manager be authorized to advertise for bids for the demolishment of the building. All voted in the affirmative.

The City Manager submitted a map upon which was indicated the streets upon which additional parking meters could be installed.



The City Manager read a letter from Hoyt Motor Co. requesting that the City accept ownership of the Garbage truck damaged in shipping, at a reduced price, after repairs to the chassis are made.

It was decided not to accept the offer made by the Hoyt Motor Company for repair of the damaged truck.

The City Manager recommended that the position of Police Lieutenant be abolished from the police roster.

It was moved by Scavenius and seconded by Setchfield that the City Manager be authorized to eliminate the position of Police Lieutenant. Voted for the motion: Barber, Krause, Scavenius, Setchfield. Voted against the motion: Rozell, Summers. Motion declared carried.

The City Manager read a letter from the Pacific Coast Building Officials Association announcing a building officials conference in Seattle, Sept. 20 to 23. It was recommended by the City Manager that Mr. Chitty, the Building Inspector, attend the conference.

It was moved by Scavenius and seconded by Rozell that the City Manager be authorized to arrange for the Building Inspector to attend the conference and for the procurement of air travel, and that the Building Inspector submit, later, an itemized expense account for hotel, meals and other normal routine travel expenses. All voted in the affirmative.

The City Manager read a letter from the Chugach Electric Association requesting they be allowed to

purchase the existing outside City electric distribution system.

After considerable discussion it was moved by Scavenius and seconded by Summers that the City Manager be directed to expand the electric distribution and telephone plant outside the City limits. All voted in the affirmative.

The following vouchers were presented for payment:

Voucher No.	Vendor	Amount
6-25	Stanley H. Reese.....	\$ 35.34
6-26	The Bond Buyer.....	50.00
6-27	Parcel Delivery & Transfer.....	81.00
6-28	Anchorage Daily News.....	15.00
6-29	Hewitt's .....	21.80
6-30	The Alaska Railroad .....	448.26
6-31	City of Anchorage—Payroll Account.....	1500.00
6-32	East Side Service Station.....	3.10
6-33	Commercial Stationers .....	75.94
6-34	Kennedy Hardware Co. ....	1097.60
6-35	The Alaska Railroad .....	7955.30
6-36	Bliss Construction Co. ....	129.87
6-37	Alaska Sales and Service .....	3500.00
6-38	Edward D. Coffey Ins. Co.....	108.55
6-39	J. C. Morris Agency.....	1729.43
6-40	Hoyt Motor Co. ....	2532.00
6-41	Edward D. Coffey Ins. Co.....	7.80
6-42	J. C. Morris Agency.....	90.13
6-43	Hoyt Motor Co. ....	5051.04

Check Requests

104	Federal Pipe & Tank Co.....	70660.27
105	Parcel Delivery & Transfer.....	33.75
106	Federal Pipe and Tank Co.....	53109.81
107	Northern Excavating Co., Inc.....	26.25
108	City of Seward .....	120.00
109	C. William Hufeisen, Builder .....	4656.69
110	Roy Boedeke .....	1300.00

It was moved by Rozell and seconded by Scavenius

that the above vouchers be approved for payment.  
All voted in the affirmative.

Meeting adjourned at 11:00 p.m.

/s/ B. W. BOEKE,  
City Clerk.

Minutes of a Special Meeting of the City Council  
Held on June 30, 1949 at 7:00 p.m.

The meeting was called to order by Acting Mayor Barber and the following councilmen reported present: Barber, Krause, Rozell, Scavenius, Setchfield. Absent: Mayor Loussac and Councilman Summers.

A letter was read from the Clerk of the U. S. District Court advising that an application had been filed by John F. Campbell, H. B. Miller, Betty B. Snook and Marg Osburn d/b/a Coral Bar at 211 4th Ave. for a Beverage Dispensary Liquor license to expire December 31, 1949. The application was approved by the Fire and Police Departments. The Health department withheld approval until installations are completed.

It was moved by Scavenius and seconded by Setchfield that the application of John F. Campbell, H. B. Miller, Betty B. Snook and Marg Osburn d/b/a the Coral Bar at 211 4th Ave. be approved subject to the approval of the Health Department. All voted in the affirmative.

Mr. Floyd Smith, representative of the Flora Engineering Company, recommended that the bid of Stateside Construction Company for the installation of the sewer system be reduced to \$400,000.00 and accepted.

It was moved by Scavenius and seconded by Setchfield that the Stateside Construction Company bid be accepted with the provision of a letter of limitation that the contract amount is not to exceed \$400,000.00. All voted in the affirmative.

Meeting adjourned 7:55 p.m.

/s/ B. W. BOEKE,  
City Clerk.

Minutes of the Regular Meeting of the City Council  
Held on July 6, 1949 at 8:00 p.m.

The meeting was called to order by acting Mayor Barber and the following councilmen reported present: Barber, Krause, Rozell, Scavenius, Setchfield. Absent: Mayor Loussac and Councilman Summers.

Minutes of the previous meeting were read and approved.

Summers present.

The City Manager read a letter from the Pacific Airmotive Corporation recommending that a policy be established which would permit new leasees to establish themselves on City Property at Merrill Field even though they are not engaged in the Aviation business. A letter was also read from Mr. Roy Heaton, Airport Manager, recommending that a policy be established relative to leasing buildings at Merrill Field for non Aviation purposes.

It was moved by Rozell that the matter be tabled until a later meeting. Motion failed for lack of a second.

It was moved by Setchfield and seconded by Rozell that the City Manager be authorized to negotiate any

lease for the City owned or leased lands at Merrill Field if the premises are used for purposes directly connected with the Aviation Industry and subject to Council approval. Voted for the motion: Barber, Krause, Rozell, Setchfield, Summers. No vote: Scavenius. Motion declared carried.

Mr. Ray Morgan of the Flora Engineering Co. spoke briefly and gave a report on the progress of the paving program and requested that a policy be established for the assessment of costs of paving the driveways between the curb and sidewalk in the residential areas. It was decided that each property owner would be responsible for driveways extending from the curb through the parkway to the sidewalk, and given an opportunity to make the installation at this time.

The City Manager read a copy of a letter from the Chugach Electric Association to the Anchorage Public Utilities for a request of 600 K.W. primary power to energize their distribution system. The matter was referred to the City Manager.

The City Manager read a letter from the Anchorage Baseball League pertaining to the concessioners of the ball park. The matter was referred to the City Manager.

The following vouchers were presented for payment:

Voucher No.	Vendor	Amount
6-44	Petty Cash Fund .....	\$ 258.69
6-45	Anchorage Installation Co. ....	24.90
6-46	J. K. Gill Company .....	26.92



Voucher No.	Vendor	Amount
6-47	Council-Mayor Salaries .....	400.00
6-48	Hellenthal, Hellenthal & Cottis .....	500.00
6-49	Sheahan-Nock Agency .....	253.59
6-50	Sheahan-Nock Agency .....	1185.00
6-51	City of Anchorage .....	2000.00
6-52	Yukon Merchandising .....	30.00
6-53	The Alaska Railroad .....	6.00
6-54	Home Reconditioning Service .....	9.75
6-55	Alaska Communication System .....	54.25
6-56	City Fuel Co. ....	28.35
6-57	General Electric Supply Co.....	608.07
6-58	Campbell Hardware & Supply .....	289.95
6-59	Line Material Company .....	1171.28
6-60	City of Anchorage, Payroll .....	41105.08
6-61	Federal Credit Union .....	723.05
6-62	First National Bank—Fed. Withholding..	11256.66
6-63	Territory of Alaska .....	65.00
6-64	Jacobs Rubber Stamp Co. ....	17.45
6-65	International City Manager's Assoc.....	4.50
6-66	Wiggins Construction Co. ....	19.80
6-67	Alaska Seed and Nursery Co. ....	107.00
6-68	Burroughs Adding Machine Co. ....	46.48
7-1	City of Anchorage .....	50.00

**Check Requests**

111	Alaska Paint & Glass .....	357.00
112	Poles, Inc. ....	1160.00
113	Burroughs Adding Machine .....	248.40
114	Brady's Floor Covering .....	35.50
115	Bill Connolly .....	100.00
116	Burroughs Adding Machine .....	43.20
117	John Odom .....	135.00

It was moved by Rozell and seconded by Setchfield that the above vouchers be approved for payment. All voted in the affirmative.

Meeting adjourned 12:10 p.m.

/s/ B. W. BOEKE,  
City Clerk.

Minutes of a Special Meeting of the City Council  
Held on July 12, 1949 at 8:00 p.m.

The meeting was called to order by Acting Mayor Barber and the following councilmen reported present: Barber, Krause, Rozell, Setchfield, Summers. Absent: Mayor Loussac and Councilman Scavenius.

A discussion was held, with the members of the Anchorage Public Utility Board in attendance, in regard to a recent letter submitted by the CEA requesting 600 K.W. primary power to energize their distribution system.

It was moved by Rozell and seconded by Krause that the A.P.U. be authorized to negotiate a contract with C.E.A. as to rate, method and other pertinent terms for furnishing interm power, said contract to be submitted to the City Council for approval. Also voted in the affirmative.

It was moved by Setchfield and seconded by Rozell that the A.P.U. be authorized to enter into a fuel oil contract for the coming year. All voted in the affirmative.

Meeting adjourned at 11:30 p.m.

/s/ B. W. BOEKE,  
City Clerk.

Certification

I, Betty Kerby, custodian of the records and keeper of the Minutes of the Common Council of Anchorage, Alaska, in the absence of the City Clerk do hereby certify that the above is a true and correct copy of the Minutes of the City Council from

June 22, 1949 through July 12, 1949 as recorded on pages 162 through 174, Volume 7 of the Minute Book of the City of Anchorage. Typographical errors having been corrected and initialed by me this 10th day of January 1951.

[Seal]            /s/ BETTY KERBY,  
                         Acting City Clerk.

[Endorsed]: Filed January 10, 1951.

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[Title of District Court and Cause.]

AFFIDAVIT OF BETTY KERBY RE  
COUNCIL MINUTES

United States of America,  
Territory of Alaska—ss.

I, Betty Kerby, first being duly sworn, under oath, depose and say:

1. That the following extracts are true, full and correct copies of the minutes of council meetings held on June 29, 1949 and June 30, 1949:

“Minutes of a Special Meeting of the City Council held on June 29, 1949, at 8:00 p.m.

“Mayor Loussac absent, the meeting was called to order by Councilman Barber and the following reported present: Barber, Krause, Rozell, Scavenius, Setchfield, Summers.

“It was moved by Setchfield and seconded by Rozell that Councilman Barber be appointed Acting Mayor to preside over meetings during Mayor Loussac’s absence. All voted in the affirmative.

\* \* \* \* \*

“Only one bid on the construction of the expansion of the sewer system having been submitted, that of the Stateside Construction Company in the amount of \$488,201.05, which was above the engineer’s estimate, Mr. Smith recommended that he be authorized to negotiate further with the contractor.

“The City Engineer and Flora Engineering Company were authorized to further negotiate with the Stateside Construction Company and report at a Council meeting to be held at 7 p.m. the following day.”

“Minutes of a Special Meeting of the City Council held on June 30, 1949 at 7:00 p.m.

“The meeting was called to order by Acting Mayor Barber and the following councilmen reported present: Barber, Krause, Rozell, Scavenius, Setchfield. Absent: Mayor Loussac and Councilman Summers.

\* \* \* \* \*

“Mr. Floyd Smith, representative of the Flora Engineering Company, recommended that the bid of Stateside Construction Company for the installation of the sewer system be reduced to \$400,000.00 and accepted.

“It was moved by Scavenius and seconded by Setchfield that the Stateside Construction Company bid be accepted with the provision of a letter of limitation that the contract amount is not to exceed \$400,000.00. All voted in the affirmative.”

2. That I am the Acting City Clerk of the City

of Anchorage and the custodian of the minute book which contains the record of the council proceedings.

Dated at Anchorage, Alaska, on 10 January 1951.

/s/ BETTY KERBY

Subscribed and sworn to before me this 10th day of January, 1951.

[Seal]        /s/ JOHN S. HELLENTHAL,  
Notary Public in and for Alaska  
My Commission expires 8 October 1953.

Acknowledgment of Service attached.

[Endorsed]: Filed January 10, 1951.

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[Title of District Court and Cause.]

### OPINION

George M. McLaughlin, Attorney for Plaintiffs,  
Anchorage, Alaska.

Hellenthal, Hellenthal & Cottis, Attorneys for Defendants, Anchorage, Alaska.

This suit was brought by the plaintiffs to enjoin the City of Anchorage and its Mayor and other officials from enforcing the collection of a special assessment for the construction of a sewer made upon a City lot owned by the plaintiffs. It is now before the Court upon plaintiffs' motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, and defendants' like motion for summary judgment made at the conclusion of the argument.



The controlling statutory provisions are to be found in Sections 16-1-81, 16-1-82, and 16-1-83, Alaska Compiled Laws Annotated 1949, hereinafter referred to as ACLA, which read as follows:

“16-1-81. Improvements for which assessment authorized: Property benefited: Amount of assessment: Owners’ request for improvement. The council may assess against the real property specially benefited by such improvements two thirds of the cost of laying out, grading, constructing or repairing any street, alley or sidewalk, constructing or repairing any sewer or drain, acquiring and constructing parks or playgrounds or making changes in channels of streams or water courses or constructing, erecting, strengthening or repairing, bulkheads, embankments or dikes for such streams or water courses. Such costs shall be assessed against the real property specially benefited in proportion to the benefits so received by each tract of land. Provided, however, that no such assessment shall be levied for any improvement unless such improvement be in writing requested of the city council by the owners of at least one half in value of the property to be so specially benefited by such improvement. The expense so assessed may include the cost to the city of acquiring premises for such improvements.”

“16-1-82. Council to determine necessity of improvements and sufficiency of petition: Findings: Forgery. When such request is presented to the council the same shall be filed and the council shall determine (1) whether the improvement requested is necessary and should be made, (2) whether the re-

quest is signed by all the owners of at least one half in value of the property specially benefited by such improvement and shall pass a resolution containing the council's findings on such questions, which findings shall be conclusive save and except that anyone who signs the name of another to such request without written power of attorney so to do, or who shall procure, solicit, aid or abet or induce another to do so, shall be guilty of forgery and shall be punished accordingly."

"16-1-83. Decision of council as to improvement and assessment. If the council find that the improvement is necessary and that the request has been signed by the owners of at least one half in value of the property to be specially benefited, the council may also decide that any part of the cost of such improvement, not, however, to exceed two-thirds thereof, shall be (the) assessed against the real property so benefited in proportion to the amount of such benefits received, by each tract of property."

The undisputed record shows that on April 29, 1949, the Council enacted Ordinance No. 1007, which, among other things, obliged the City to levy the assessment to repay bonds to be issued for construction of the sewer. On July 1, of the same year, the contract for the construction of the sewer was let. In the meantime, after April 1, 1949, and prior to July 1, 1949, petitions were circulated and signatures obtained of a majority in number of the property owners asking for the construction of the sewer and consenting to the levy of the assessments now challenged. That petition was not signed by the plaintiffs

in this action. However, it seems certain that the petitions were before the Council on July 1, 1949, when the work was authorized. Nothing in the minutes of the Council indicates that any action was taken on the petitions or with respect to them at that time.

It was not until March 2, 1950, that the resolution was passed in conformity with the requirements of Section 16-1-82, finding the petition sufficient and the improvements necessary. In the meantime, as shown by Section 201.1 of the Anchorage General Code, of which the Court must take judicial notice, Section 55-5-12, ACLA, an election was scheduled to be held on October 4, 1949, for the election of two members of the Council. Accordingly, it appears that the Council which passed the resolution of March 2, 1950, was not the identical council which authorized the work even though, through re-election, the membership may have been the same.

Plaintiffs urge that the detailed requirements of Section 16-1-82 are mandatory and that those steps must be taken in order before the levy can be made and the work carried out, and that failure in such respect makes the assessment void. Defendants assert that the provisions of the Section are not mandatory, but directory only, and hence not essential to the validity of the assessment and levy.

ACLA is a compilation only and not positive law, and, therefore, it is necessary to go to the source of the statute. The three sections above quoted are part of Chapter 97 of the Session Laws of Alaska, 1923,

Section 16-1-82 appearing as Section 64 of Chapter 97. Reference to the Session Laws shows that as enacted, Section 64 contained the following heading: "Council must determine the necessity of improvement and sufficiency of petition." (Emphasis supplied.) No suggestion is made that the title of the Section was ever changed by legislative enactment, but in the compilation now to be found in ACLA, the word "must", as embraced in Chapter 64, has been editorialized to the word "to" in Section 16-1-82. Note is made of the change so brought about without legislative action because it may throw some light upon the purpose and intent of the legislature. In the body of the Section, we find that the Council "shall" take the steps prescribed therein as preliminary to the making of the assessment. While the word "shall" may be construed as permissive rather than mandatory, there is nothing in the statute under consideration to require it. Attention has been invited to the text of 6 McQuillin on Municipal Corporations (3rd Ed.) 141, and to 50 Am. Jur 53, in support of the suggestion that "shall" ought to be construed as "may". However, the limitations of the doctrine are accurately pointed out in 50 Am. Jur. 54, as follows:

"The rule applies where no advantage is lost, when no right is destroyed, when no benefit is sacrificed, either to the public or the individual, by giving it such construction. \* \* \* The courts are, however, reluctant to contravene or construe away terms of a



statute which in themselves are mandatory, except where the intent and purpose of the legislature are plain and unambiguous and clearly signify a contrary construction.”

The defendants further suggest that only substantial compliance with the statute is indispensable, 14 McQuillin on Municipal Corporations (3rd Ed.) 264, 48 Am. Jur. 683, and that the order in which several steps are taken is of no material consequence, *City of Lowell vs. Lowell Building Corporation*, 34 N.E. (2d) 618 (Mass. 1941), in which it is held that an order of the council made after the work was completed “may properly be held to have been a ratification of the work previously done and a subsequent ratification is the equivalent or original authority.” But nowhere in the opinion of the Lowell case are to be found the applicable statutes or the ordinances upon which the decision is based.

No matter how persuasive and even convincing may be the reasoning advanced by the defendants here, and underlying the decision in the Lowell case, plainly designed to uphold the public interest without injustice to any individual, this Court in this action is controlled by the opinion and decision of the Circuit Court of Appeals for the Ninth Circuit, given in the year 1923, in the case of *In re Ketchikan Delinquent Tax Roll*, 293 F. 577, from which the following is quoted:

“Section 627 of the Cimpiled Laws of the Territory of Alaska of 1913 provides as follows:



“ ‘That the said common council shall have and exercise the following powers: \* \* \* Fourth. To provide for the location, construction, and maintenance of the necessary streets, alleys, crossings, sidewalks, sewers, and wharves. If such street, alley, sidewalk, or sewer, or parts thereof, is located and constructed upon the petition of the owners of two-thirds in value of the property abutting upon and affected by such improvement, then two-thirds of the cost of the same may, in the discretion of the council, be collected by the assessment and levy of a tax against the abutting property, and such tax shall be a lien upon the same and may be collected as other real estate taxes are collected.’

“Section 628 provides:

“ ‘The common council may exercise their powers by ordinance or resolution, but no ordinance or resolution shall be valid unless adopted by a vote of four members of the council, at a meeting where not less than five members are present.’

“On the 5th day of October, 1920, a petition was presented to the common council of the city of Ketchikan, praying for the construction of a certain roadway and sidewalk and the establishment of a right of way therefor; the petitioners agreeing to pay their proportionate share of two-thirds of the cost of the improvement, and that the same be a specific lien upon their respective properties abutting on the improvement. The petition was approved and ordered filed upon presentation to the city council, and the city clerk was directed to call for bids for the work

at the next regular meeting. So far as the record discloses, no other or further action was taken by the city council until a resolution was adopted on February 2, 1921, assessing two-thirds of the cost of the improvement against certain persons and the lands owned or occupied by them, and declaring the sums so assessed a specific lien upon the lands. On May 20, 1922, the delinquent tax roll for the city for the year 1921 was presented to the court under the provisions of chapter 69 of the Session Laws of Alaska of 1913, for adjustment and order of sale of the property therein described. At the same time there was presented the delinquent assessment roll for the improvement in question. The appellee, Furnivall, filed objections to the assessment and order of sale and after hearing before the court the objections were sustained. From that order the present appeal is prosecuted.

“In the course of its opinion the court below said:

“ ‘It being shown clearly that two-thirds of property owners abutting on the proposed Harris Street extension had not petitioned therefor, this is jurisdictional, and, as to the nonconsenting owners, the whole proceedings are illegal.’

“1. But the court made no further findings upon that issue. The court further held, however, that inasmuch as the improvement and assessment against the **abutting** property was not provided for by ordinance or resolution, the whole proceeding was void, and upon this latter ground we are of opinion that

the judgment of the court below should be affirmed. The power to locate, construct, and maintain streets, and more especially the power to impose a tax upon abutting property owners, is a legislative one, and can only be exercised by ordinance or resolution. 28 Cyc. 992; *Chicago & N.P.R. Co. vs. City of Chicago*, 174 Ill. 439, 51 N.E. 596; *Eckert vs. Walnut*, 117 Iowa, 106, 91 N.W. 929; *Zalesky vs. Cedar Rapids*, 118 Iowa, 714, 92 N.W. 657; *McQuillin's Municipal Corporations*, p. 1334.

“2. Furthermore, under the Alaska statute, the discretion to levy a tax upon abutting property to pay two-thirds of the cost of an improvement must be exercised when the petition for the improvement is heard, and before, or at the time, the improvement is ordered. Most assuredly one city council cannot make an improvement, and some other city council, at some later day, exercise the discretion to impose a part of the burden upon abutting property owners.

“The assessment is therefore void, and the judgment is affirmed.”

The force of the opinion above quoted is not materially weakened by the fact that the assessment there made was under a statute which has since been repealed. This Court is nevertheless bound by the ruling that the steps must be followed in the order provided in the statute without substantial deviation, and that one council is not permitted by ratification to validate in such a matter the acts of a previous council.

The question of estoppel also is here presented. The plaintiffs made no protest concerning the con-

struction and appeared at the hearing urging only that the cost of the work be paid out of the general funds of the City and not paid in part by special assessments. The elements of equitable estoppel are well stated in the case of *Schmidt et al vs. Village of Deer Park*, 78 N.E. (2d) 72 (Ohio 1947), cited and quoted in defendants' brief, as follows:

"Active participation in causing the improvements to be made will estop the party engaged therein from denying the validity of the assessment; but to create an estoppel from silence merely, it must be shown that the owner had knowledge:

"1. That the improvement was being made.

"2. That it was intended to assess the cost thereof, or some part of it, upon his property.

"3. That the infirmity or defect in the proceedings existed which he is to be estopped from asserting; and

"4. It must appear that some special benefit accrued to his property from such improvement which it is inequitable, under the circumstances, he should enjoy without compensation."

Substantially the same rules were set forth in *In re Ketchikan Delinquent Tax Roll*, 6 Alaska 653 (1922) affirmed 293 Fed. 577.

There is no proof that at the time the work was done the plaintiffs had knowledge that it was intended to assess the cost of the improvements or some part of it upon their property, and therefore I find that estoppel does not operate against the plaintiffs in this case.

Counsel for defendants assert that a decision in favor of the City would not run counter to the due process provisions of the Constitution because under Sec. 16-1-85 ACLA, the plaintiffs were heard to present their objections to the assessment. But if the provisions of Section 16-1-82 are mandatory, full compliance with due process otherwise is not sufficient, under the decision of the Court of Appeals in the Ketchikan case, to validate the assessment.

There is question whether in a case of such consequence, a summary judgment is proper. 8 Cyclo-  
pedia Fed. Procedure 215; Kennedy vs. Silas Mason  
Co., 334 U.S. 249 (1947); Eccles vs. Peoples' Bank,  
333 U.S. 426 (1947); but since it appears that all of  
the facts are fully stated in the record, and no further  
facts could be gained by trial, and since both parties  
ask for summary judgment, it is appropriate that  
the case be decided on the motions.

Following the authority of the Ketchikan case,  
the motion for summary judgment in favor of the  
plaintiffs and against the defendants is granted.

Dated at Anchorage, Alaska, this 29th day of Janu-  
ary, 1951.

/s/ ANTHONY J. DIMOND,  
District Judge.

[Endorsed]: Filed January 29, 1951.



In the District Court for the Territory of Alaska,  
Third Division

No. A-6622

ARTHUR E. ASHLEY and VIRGINIA  
ASHLEY,

Plaintiffs,

vs.

THE CITY OF ANCHORAGE, a municipal corporation; Z. J. LOUSSAC, Mayor of the City of Anchorage; B. W. BOEKE, City Clerk-Treasurer of the City of Anchorage; ROBERT E. SHARP, City Manager of the City of Anchorage,

Defendants.

### JUDGMENT

The above entitled cause came on regularly to be heard before the court on the 5th day of January, 1951, on the Plaintiffs' motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, and Defendants' like motion for summary judgment made at the conclusion of the argument, both motions being based upon the pleadings, admissions, affidavits, records and files herein, George M. McLaughlin appearing as attorney for Plaintiffs, and Hellenthal, Hellenthal, and Cottis, appearing for the Defendants, and the court having heard the arguments of counsel, and having fully considered the evidence and having rendered its opinion on the 29th day of January, 1951, and having granted on

that same day the motion for summary judgment in favor of the Plaintiffs and against the Defendants,

Now, Therefore, It Is Ordered, Adjudged, and Decreed:

That the Plaintiffs were during all the times mentioned herein and now are the owners in fee simple and entitled to the possession of all that certain real property situated in the City of Anchorage, Alaska, and more particularly described as follows:

Lot Ten (10) of Block Forty-Two A (42A) of the South Addition of the City of Anchorage referred to and described in the complaint of the said Plaintiffs on file herein; that the claims of the Defendants, the City of Anchorage, Z. J. Loussac, B. W. Boeke, and Robert E. Sharp, and their successors and assigns are without any right whatever, and that said Defendants have no right, title, interest, or claim or estate whatsoever in or upon said real property, or any part thereof by virtue of a certain resolution of Defendant City of Anchorage entitled "Resolution No. 577, Sewer Assessments in Four Districts, Levy of Assessment" duly adopted by the City Council of said Defendant City of Anchorage, on the 18th day of October, 1950, and said Defendants and their successors and assigns are hereby enjoined and debarred from claiming or asserting any estate, right, title, interest in, or claim upon said real property, or any part thereof by virtue of said resolution.

It Is Further Ordered, Adjudged and Decreed:

That said Plaintiffs have and recover of and from the said Defendant, the City of Anchorage, the costs

and disbursements in this action incurred, to be taxed by the Clerk of the Court in the manner provided by law, and an attorney's fee in the sum of three hundred fifty Dollars.

Dated at Anchorage, Alaska, this 23rd day of March, 1951.

/s/ ANTHONY J. DIMOND,

District Judge.

Entered March 23, 1951.

Acknowledgment of Service attached.

[Endorsed]: Filed March 23, 1951.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that the City of Anchorage, et al, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on March 23, 1951.

/s/ WILLIAM KRASILOVSKY,

For Hellenthal, Hellenthal &

Cottis, Attorneys for Defendants

Acknowledgment of Service attached.

[Endorsed]: Filed April 17, 1951.

[Title of District Court and Cause.]

ORDER

The Defendant City of Anchorage through its attorneys having filed herein, a motion supported by affidavit praying for an extension of time for filing the record and docketing the appeal in this cause with the Appellate Court; and it appearing to the satisfaction of this court that good reason exists for such extension, now therefore, it is

Ordered, Adjudged and Decreed that the defendant City of Anchorage have to and including the ninetieth day from the date of filing the notice of appeal in which to file the record and docket the appeal.

Done in open court at Anchorage, Alaska, the 26th day of May, 1951.

/s/ ANTHONY J. DIMOND,  
District Judge.

Entered May 25, 1951.

[Endorsed]: Filed May 26, 1951.

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[Western Union Telegram]

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Paul P. O'Brien, Clerk—

Court of Appeals Ninth Circuit Sfran—

Request extension of time to August 15th for doc-

keting City of Anchorage vs. Ashley on grounds Reporter has been unavailable during extended time since Notice of Appeal Trial Judge has exhausted time to extend which time will expire midnight tonight record being airmailed today by clerk believe record can be abbreviated during requested period wire today if request granted—

Hellenthal, Hellenthal and Cottis

So Ordered

/s/ WILLIAM DENMAN,

Chief Judge, U. S. Court of Appeals for the Ninth Circuit

[Endorsed]: Filed July 17, 1951. Paul P. O'Brien, Clerk.

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, M. E. S. Brunelle, Clerk of the above entitled Court, do hereby certify that pursuant to the provisions of Rule 11 (1) of the United States Court of Appeals for the Ninth Circuit, as amended, and pursuant to the provisions of Rules 75 (g) (o) of the Federal Rules of Civil Procedure, and pursuant to designation of counsel, I am transmitting herewith the original papers in my office dealing with the above entitled action or proceeding, and including specifically the complete record and file of such



action, such record being the complete record of the cause pursuant to the said designation.

The papers herewith transmitted constitute the record on appeal from the judgment filed and entered in the above entitled cause by the above entitled Court on March 23, 1951 to the United States Court of Appeals at San Francisco, California.

[Seal] M. E. S. BRUNELLE,  
Clerk of the District Court for the Territory of  
Alaska, Third Division.

/s/ By GERTRUDE KELLNER,  
Chief Deputy.

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[Endorsed]: No. 13016. United States Court of Appeals for the Ninth Circuit. The City of Anchorage, a Municipal Corporation, Z. J. Loussac, Mayor of the City of Anchorage, B. W. Boeke, City Clerk-Treasurer of the City of Anchorage, Robert E. Sharp, City Manager of the City of Anchorage, Appellants, vs. Arthur E. Ashley and Virginia Ashley, Appellees. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Third Division.

Filed July 18, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13016

CITY OF ANCHORAGE, a municipal corporation,  
Appellant,

vs.

ARTHUR E. ASHLEY and VIRGINIA  
ASHLEY,

Appellees.

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY

1. The Court erred in holding the provisions of 16-1-81, 16-1-82, 16-1-83 of Alaska Compiled Laws Annotated 1949, also in Sections 2431, 2432, 2433 Compiled Laws of Alaska 933, also in Chapter 97, sections 63, 64, and 65 of Session Laws of Alaska 1923, to be mandatory.

2. The Court erred in holding the order of compliance with the above sections to be mandatory.

3. The Court erred in holding that the provisions and order of the above sections were not complied with.

4. The Court erred in granting summary judgment when there remained issues of fact, which issues clearly arose out of the pleadings and were at no time waived by appellants. These issues included the issue of fact as to estoppel of respondents and waiver of objections by respondents due to failure to

specifically object to the assessments at public hearing provided therefor.

5. The Court erred in denying Appellant's motion to dismiss filed on the 20th day of December, 1950.

Dated at Anchorage, Alaska this 1st day of August, 1951.

/s/ JOHN S. HELLENTHAL,

For Hellenthal, Hellenthal & Cottis  
Attorneys for Appellants.

Acknowledgment of Service attached.

[Endorsed]: Filed Aug. 13, 1951. Paul P. O'Brien,  
Clerk.

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[Title of U. S. Court of Appeals and Cause.]

### STIPULATION

Comes now Hellenthal, Hellenthal and Cottis, attorneys for the Appellant/Defendant in the above entitled action, and George McLaughlin, attorney for the Respondents/Plaintiffs in the above entitled action, and stipulate as follows:

That the only portion of the Court Reporter's Transcript of the above entitled action that shall be included in the record on appeal shall be as follows, and that the following statement is a correct statement:

#### Reporter's Transcript

Mr. Hellenthal: "I have checked the law and find that, unlike the old procedure where both parties moved for judgment on the pleadings, now under

Rule 56 the Court has some discretion under the summary judgment rule. I know now that plaintiffs had actual legal notice—and the record states the full facts; therefore, defendant City moves now for summary judgment in its favor on the pleadings in this case according to Rule 56''.

Dated at Anchorage, Alaska, this 16th day of July, 1951.

/s/ JOHN S. HELLENTHAL,  
For Hellenthal, Hellenthal & Cottis  
Attorneys for Appellant.

/s/ GEORGE M. McLAUGHLIN,  
Attorney for Appellee.

[Endorsed]: Filed Aug. 13, 1951. Paul P. O'Brien,  
Clerk.